

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Mi Familia Vota, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	2:22-cv-00509-SRB
	)	
Adrian Fontes, et al.,	)	
	)	Phoenix, Arizona
Defendants.	)	November 16, 2023
-----	)	9:00 a.m.

BEFORE: THE HONORABLE SUSAN R. BOLTON, SENIOR JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - DAY 8 - A.M. SESSION

(Pages 1843 through 1959)

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<u>WITNESSES FOR THE</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
<u>DEFENDANTS:</u>			
MARK HOEKSTRA, PH.D.		1848	1883
JESSE RICHMAN, PH.D.	1902	1938	

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<u>EXHIBIT NO.:</u>	<u>DESCRIPTION:</u>	<u>RECEIVED:</u>
974	(Table)	1932

P R O C E E D I N G S

THE COURT: Good morning, please sit down.

And Mr. Babbitt, I believe you were cross-examining.

MR. BABBITT: Yes, Your Honor, I want to make sure there aren't any housekeeping items to attend to.

MR. DODGE: We have a few brief matters of housekeeping just to land this plane as smoothly as possible, but we can do it after.

THE COURT: Dr. Hoekstra has indicated a desire to be finished as soon as possible, so I think that can wait.

MR. DODGE: We agree.

CROSS-EXAMINATION

BY MR. BABBITT:

Q. Good morning, Dr. Hoekstra. I would like to start where we were going to pick up at the end of the day yesterday, which is everybody's favorite topic, Medicaid. And based on your back and forth with Mr. Langhofer yesterday, I want to see if we can frame the disagreement you have with Dr. Burch fairly.

So in essence, if I understand it, Dr. Burch relies on a 2007 study by the Government Accountability Office, which she uses to support her conclusion that DPOC requirements can have an adverse effect on Medicaid participation.

In contrast, you view that article as unreliable and think that the Sommers article from 2010 is more reliable and you use that to support your conclusions in this case. Is that

9:02:17AM 1 a fair framing of the issue for this morning?

2 A. I think in terms of her characterization of that report,

3 that report was about citizens versus non-citizens, and I think

4 you phrased it somewhat differently than that. So that's one

9:02:35AM 5 slight difference.

6 Otherwise, I think that's right. The first thing was

7 a report written by a government agency. The second thing is a

8 peer-reviewed article written by a Harvard researcher.

9 Q. Okay. So let's pull up the first page of the GAO report.

9:02:51AM 10 Let's pull up the first page of the GAO report, so we can go to

11 that government agency document.

12 MR. BABBITT: So Stephen, this is PX554. If we can go

13 to page 2.

14 BY MR. BABBITT:

9:03:02AM 15 Q. So Professor Hoekstra, can you see that on your screen

16 there? And I'd like you to read that highlight.

17 THE COURT: We can see it, but it is not easy to read

18 it. That's much better. Thank you.

19 THE WITNESS: I agree with that.

9:03:15AM 20 BY MR. BABBITT:

21 Q. So I would like to focus on the highlighted section which

22 says that: Not all of the 22 states reporting declines could

23 quantify enrollment declines due specifically to the

24 requirement, that's the DPOC requirement, but a state that had

9:03:29AM 25 begun tracking the effect identified 18,000 individuals in the

9:03:33AM 1 seven months after implementation whose applications were  
2 denied or coverage was terminated for inability to provide the  
3 necessary documentation, though the State believed most of them  
4 to be eligible citizens.

9:03:46AM 5 And you don't have any reason to think the State was  
6 wrong with respect to those 18,000 individuals, do you?

7 A. So the State may very well have been right about 18,000  
8 people having their applications denied. I think the, you  
9 know, key part of that sentence is this thing about where the

9:04:05AM10 State believed most of them were eligible citizens. That's,  
11 you know, that's a big problem throughout this report, is they  
12 are asking for these subjective beliefs about whether the  
13 people who were no longer getting covered were citizens or not  
14 citizens.

9:04:20AM15 Q. And do you recall what the GAO said about why they were  
16 comfortable relying on the State's assessment of the apparent  
17 citizenship status of the individuals?

18 A. I believe they said something like, well states were making  
19 this determination, you know, in the past based on people  
9:04:35AM20 attesting or not attesting to be citizens.

21 Q. Right. So let's actually turn to footnote 12 of the GAO  
22 report where they address this directly. And your recollection  
23 is very good. It says: We asked states whether they thought  
24 enrollment declines were due to, in part, individuals who  
9:04:59AM25 appeared to be eligible citizens experiencing delays or losses.



9:05:02AM 1 We believe that the States' assessment of individual  
2 citizenship were appropriate, given their reliance on prudent  
3 person policies to make such determinations under their prior  
4 self-attestation policies.

9:05:13AM 5 And you understand what that means?

6 THE COURT: I have no idea what a "prudent person"  
7 policy is.

8 THE WITNESS: I don't either actually.

9 BY MR. BABBITT:

9:05:23AM10 Q. In essence, the regime is that individuals would  
11 self-attest to their citizenship status, and then if the  
12 government official had reason to doubt that, then they would  
13 sort of -- then they would look behind it.

14 Sort of like if you go to a bar and you look like you  
9:05:36AM15 are under 21 or might be close, they would ask you for ID. But  
16 once you get to a certain age, they stop asking you for ID,  
17 right? That's how this policy worked in practice?

18 A. Yeah, I am not so sure I think -- I am not so sure that's a  
19 fair analogy, because it's much harder to figure out whether  
9:05:52AM20 someone, you know, appears to be a citizen or not. It's not  
21 like age where we can do a decent assessment of that.

22 Q. But your view is that it's inappropriate for the GAO to  
23 draw -- or by extension, Dr. Burch, to draw any conclusions  
24 based on someone's self-attestation of their citizenship  
9:06:10AM25 status?

9:06:12AM 1 A. The whole point of these laws, of this policy change was  
2 to -- was to require documentation rather than simple  
3 attestation of citizenship. And so if people were attesting to  
4 be citizens in order to get Medicaid, the point was to figure  
9:06:30AM 5 out who those people were and to get them so that they were no  
6 longer eligible for Medicaid.

7 And it's -- there are much better ways to assess  
8 effects on citizens versus non-citizen rather than rely on this  
9 subjective assessment by state officials who don't really know  
9:06:46AM 10 whether those people are citizens or not.

11 Q. And you believe that the Sommers report is not subject to  
12 that same vulnerability?

13 A. That's correct.

14 Q. So let's turn to --

9:06:58AM 15 MR. BABBITT: Stephen, DX944, which is the Sommers  
16 report.

17 BY MR. BABBITT:

18 Q. And you understand that Professor Sommers was relying on  
19 the current population survey conducted by the Census Bureau  
9:07:12AM 20 for his data set, correct?

21 A. Yes.

22 Q. And you understand that there's no citizenship question  
23 in -- the census does not track citizenship, right?

24 A. The census does track citizenship.

9:07:25AM 25 Q. So -- I should say, it doesn't validate citizenship

9:07:29AM 1 independently; rather it asks individuals whether they were  
2 citizens in this survey?

3 A. That's correct, yeah. That's tracking, yeah. But I take  
4 your point.

9:07:41AM 5 Q. So let's --

6 MR. BABBITT: Stephen, let's go to the top of page 3  
7 of this study, so 176.

8 BY MR. BABBITT:

9 Q. It says -- and CPS is the Current Population Survey. So it  
9:07:55AM 10 says: Given that these measures are self-reported, one concern  
11 is that immigrants will misrepresent their legal status.

12 Right? And so -- and it says: The limited nature of  
13 the CPS items mitigates this problem.

14 The survey does not ask respondents if they are in the  
9:08:12AM 15 U.S. legally; it only asks if they are citizens. So this too  
16 is relying on a self-attestation of citizenship to determine  
17 whether people are citizens or not, you are not overcoming the  
18 problem?

19 A. I disagree with that. So this is asking -- it's true, they  
9:08:28AM 20 are asking about citizenship, but they are asking about it in  
21 the context of a census survey, which is meaningfully different  
22 than asking about citizenship in the context of, do you want  
23 this benefit or do you not? And the census is very careful  
24 about -- I mean, they're very worried about people not  
9:08:45AM 25 answering questions and not answering questions correctly.

9:08:48AM 1 And so there's no cross-link from census data to other  
2 state databases or anything like that where it says, hey, in  
3 census, this person said they're not a citizen and over here it  
4 said they are a citizen.

9:08:59AM 5 Census doesn't do that because they want people to  
6 tell the truth. And obviously when you go to Medicaid and  
7 you're trying to become eligible for Medicaid, there's an  
8 incentive there to not tell the truth about citizenship if you  
9 want to get -- if you want to get Medicaid. There's no  
9:09:14AM 10 incentive here.

11 Q. And you don't think that the the same individuals who would  
12 be attesting to those citizenship for purposes of Medicaid are  
13 not also attesting to their citizenship for purposes of the CPS  
14 data?

9:09:26AM 15 A. I think the incentives are meaningfully different in, you  
16 know, those two contexts. Here you have a survey where you  
17 have no reason to lie. In Medicaid there is, you know, an  
18 incentive to lie. It's an open question whether people did,  
19 but there is certainly a pretty strong incentive there.

9:09:42AM 20 Q. An open question, we can leave it at that; is that fair?

21 A. The important thing is the incentives are meaningfully  
22 different across these two data sets, and I think that matters  
23 a lot for assessing the reliability of these two approaches.

24 Q. Okay. Well, let's move on to other aspects of the Sommers  
9:09:59AM 25 analysis.

9:09:59AM 1                   So what is your understanding of how strictly the DPOC  
2                   requirement was being enforced in the -- under Medicaid in the  
3                   analysis that the GAO performed?  
4                   A.   So you are talking about as a result of the policy.

9:10:17AM 5                   Q.   Exactly.  
6                   A.   Do I -- so my sense is that they were requiring  
7                   documentation, and I don't know the, you know, the nuts and  
8                   bolts of exactly how they were doing that, but that's what they  
9                   were required to do under law.

9:10:29AM 10                  Q.   Okay. And your understanding is that that requirement took  
11                  effect in July of 2006?  
12                  A.   I believe that's right. It's listed in one of the figures  
13                  in the paper.

14                  Q.   Yeah, we can get to that in a moment.

9:10:39AM 15                  MR. BABBITT: Stephen, let's pull up 554, page 21.

16                  BY MR. BABBITT:  
17                  Q.   And so what we see here is this is an explanation of how  
18                  the states were implementing the different requirement, the  
19                  DPOC requirement. And it says: In total 33 states reported  
9:10:56AM 20                  the number of days --  
21                  A.   Can I have you pause? What are we reading from again?  
22                  Q.   This is the GAO report.  
23                  A.   Got it.  
24                  Q.   And this is an explanation of how states implemented the  
9:11:10AM 25                  DPOC requirement beginning in July of 2006.

9:11:14AM 1 And so what we see is in total 33 states reported the  
2 number of days they allowed applicants and beneficiaries to  
3 meet the requirement, and the limits ranged from 10 days to up  
4 to a year. And only nine of those states reported -- requiring  
9:11:30AM 5 individuals to allow DPOC within 30 days or less. In some  
6 states, if we go down further in the highlighted section,  
7 reported allowed applicants an "indefinite" amount of time to  
8 obtain necessary documentation, provided they were deemed as  
9 making a good-faith effort.

9:11:54AM 10 Let me know when you are done reading that.

11 A. Okay.

12 Q. And so since some states were allowing that July 2006 date  
13 to slip, even as late as July 2007, and some states extended it  
14 indefinitely for people who making a DPOC requirement -- who  
9:12:15AM 15 were making a good-faith effort to supply DPOC. Doesn't that  
16 call into question the ability to rely on snapping the line in  
17 July of 2006 to draw conclusions, because you don't even know  
18 when this requirement was implemented?

19 A. Well, you know it was implemented for some. I mean, they  
9:12:31AM 20 are not very -- I mean, this report in general isn't very  
21 precise. And so there -- you know clearly there are nine  
22 states where they gave them 30 days or less. I don't know what  
23 the full -- they don't spell out the full distribution.

24 But it is clear there's a meaningful number of states  
9:12:45AM 25 where this thing became binding, you know, soon. And I believe

9:12:49AM 1 from recollection the authors look through 2007, 2008 for  
2 effects, which would capture most, if not all, of these states.  
3 Q. Well, you say "meaningful," but we don't actually know,  
4 right? I mean, in the Sommers report we don't know which --  
9:13:04AM 5 right? If nine states -- if only nine states required DPOC to  
6 be provided within 30 days, at least a lot of states where --  
7 you know, you're well past certainly August of 2006, we don't  
8 really know when those states were doing it?  
9 A. Again, I mean, it would be -- yeah, I agree it would be  
9:13:22AM 10 great to know exactly when they are doing it. We're talking  
11 about the maximum is a year, and a few indefinite. And I don't  
12 know if that means the others are 60 days or if they're 90 days  
13 or 180 days, but again, the authors are looking at effects all  
14 the way through 2007, 2008.  
9:13:38AM 15 Q. Yeah, but we don't actually know that the maximum is a  
16 year, right, indefinite is indefinite?  
17 A. Yeah. Again, the language here is not very precise. I  
18 mean, 33 states ranging from 10 to a year and a few were  
19 indefinite.  
9:13:57AM 20 Q. Well, let's see what that looks like on the chart that you  
21 provided in your report.  
22 MR. BABBITT: Stephen, if we could go to DX900, page  
23 9?  
24 BY MR. BABBITT:  
9:14:06AM 25 Q. And I understand, Professor Hoekstra, that you've

9:14:08AM 1 basically just either cut and pasted or replicated these charts  
2 from Professor Sommers' report, right?

3 A. Yes, cut and pasted. Don't give me too much credit.

4 Q. All right. So then -- what I was trying to describe  
9:14:21AM 5 verbally but I think we can now see visually, is, right, you  
6 got this, you know, vertical black line in here, Professor  
7 Sommers says: The documentation rule was implemented in July  
8 of 2006.

9 But once we slip that to the right, for some number of  
9:14:37AM 10 states, right, only 30 was implementing this requirement --  
11 excuse me -- only nine states were implementing this  
12 requirement by August of 2006.

13 And slip it to the right for a year, and we slip it  
14 further to the right indefinitely, this starts to look like  
9:14:54AM 15 this study -- I recognize it was conducted in a top economics  
16 journal in the field, but it seems like it was done a little  
17 early to draw the conclusions that you're imputing to it?

18 A. So one way to test your hypothesis here would be to say,  
19 you know, were they reducing enrollments by non-citizens over  
9:15:13AM 20 this same time period, because of the factors that you just  
21 laid out are going to impact citizens and non-citizens, right?

22 And so if you look at those graphs, and as we talked  
23 about earlier under direct, the authors are finding, you know,  
24 evidence of meaningful reductions in enrollments by  
9:15:29AM 25 non-citizens from these same policies. Yes, some of them were



9:15:33AM 1 lagged, but enough of them were obviously implemented quickly  
2 enough that they had an impact on non-citizens, and yet you  
3 don't see it on citizens.

4 Q. But non-citizens -- there are non-citizens who can  
9:15:47AM 5 participate in Medicaid, right?

6 A. Sure, and that would -- I mean, to the extent you think  
7 that those people were -- you know, were not among those who  
8 were being dropped from Medicaid, that means our estimates on  
9 non-citizens are a little bit conservative, that you would even  
9:16:04AM 10 bigger declines among non-citizens.

11 Q. All right. I think we can move on from these charts, and I  
12 would like to talk about just sort of how Professor Sommers  
13 thinks about the DPOC requirement. He thinks of it as a  
14 compliance cost, right, or he describes it as a compliance  
9:16:24AM 15 cost?

16 A. I believe so. I don't remember the terms, but I think it  
17 would have been fair for him to do that, and I am sure he  
18 probably did.

19 Q. Okay. So let's just make sure that we're not -- there's no  
9:16:35AM 20 question mark about that.

21 MR. BABBITT: Stephen, if we could pull up 944, pages  
22 7 and 8, I believe.

23 BY MR. BABBITT:

24 Q. Right there at the bottom we see Professor Sommers stating:  
9:16:46AM 25 Private compliance costs are more difficult to estimate. A

9:16:48AM 1 minority of applicants have already demonstrated citizenship  
2 for other programs so they wouldn't have to reproduce it. But  
3 others, the DRA could have a significant burden -- could be a  
4 significant burden, because getting DPOC costs, you know, \$5 to  
9:17:05AM 5 \$23 for birth certificates, 87 to 97 for a passport -- again,  
6 these are 2010 figures, so those would have increased -- but he  
7 understands those to be compliance costs, and you don't dispute  
8 that, right?

9 A. Yeah, that's right. I mean, I think assessing the  
9:17:19AM 10 magnitude of those things, you know, as he says, is pretty  
11 hard. But I agree there could be compliance costs for some of  
12 those people.

13 THE COURT: Could I interrupt for a second? There's a  
14 reference to the DRA, is that the law?

9:17:33AM 15 MR. BABBITT: That's the Deficit Reduction Act of  
16 2005, which is what implemented this requirement in the  
17 Medicaid context.

18 BY MR. BABBITT:

19 Q. So Professor Hoekstra, we are almost ready to move on from  
9:17:46AM 20 Medicaid, but I wanted to ask one more thing about Professor  
21 Sommers' conclusion, which is --

22 MR. BABBITT: Stephen, if we go back to page 1 of  
23 this?

24 BY MR. BABBITT:

9:17:56AM 25 Q. And we see at the end of his abstract, which -- where he

9:18:00AM 1 says: Nonetheless -- after going through his assessment. He  
2 says: A cost-benefit analysis indicates that the policy was a  
3 net loss to society of \$600 million through increased  
4 administrative -- state administrative spending and compliance  
9:18:14AM 5 costs imposed on U.S. citizens applying for Medicaid.

6 So you're not -- you didn't perform any sort of  
7 cost-benefit analysis in this case to say whether there would  
8 be a net benefit or net loss to society from HB 2492 or  
9 HB 2243, did you?

9:18:34AM 10 A. That's right.

11 Q. So let's move on to the Cantoni and Pons article, which  
12 Mr. Langhofer asked you about yesterday, and in your report you  
13 refer to this as by far the most thorough assessment of the  
14 impact of strict voter identification laws. And as I  
9:18:59AM 15 understand it from your discussion with Mr. Langhofer

16 yesterday, you continue to believe that to be true?

17 A. Yes.

18 Q. Okay. And let's pull up that article.

19 MR. BABBITT: Stephen, it's PX547, page 1.

9:19:13AM 20 BY MR. BABBITT:

21 Q. This is the article that we're are talking about, right?

22 A. Yes.

23 Q. And so -- I know that we spent some time on this yesterday  
24 in the abstract, and we have also spent some time on this in

9:19:26AM 25 the deposition, but just to make sure I understand what the

9:19:30AM 1 statistics are here, the net result of this is that they  
2 conducted a survey of 1.6 billion voter events over a ten-year  
3 period, 2008 to 2018. And they ultimately concluded that  
4 within a 95 percent confidence interval, the overall effect on  
9:19:54AM 5 registration and turnout was between negative 2.3 percent for  
6 registration and positive 2.1 percent. And then with respect  
7 to turnout, it was negative 3.0 percent and 2.8 percent. And  
8 so those are sort of -- it's a bracket around zero. And their  
9 best estimate is that the effect was minus 0.1 percent, and I  
9:20:21AM 10 think you said that was statistically indistinguishable from  
11 zero; is that fair?  
12 A. That's correct. And it's also -- you know, we talked about  
13 when we split it up by race the estimate is actually positive  
14 for non-whites and negative for whites, but both of those are  
9:20:35AM 15 indistinguishable from zero.  
16 Q. Okay. So setting aside this sort of any racial disparities  
17 or lack of disparities that you think this study shows, let's  
18 just talk about what even minus .1 percent looks like over a  
19 data set of 1.6 billion. I mean, you are the math whiz here,  
9:20:55AM 20 but that's 1.6 million voter events, right? That's their best  
21 estimate, right?  
22 A. So it's 1.6 million, I believe it's individuals by election  
23 is the level of observation. If you were to apply that number  
24 to a, you know, particular election, say to an Arizona  
9:21:13AM 25 election, you would take .001 times 2 million, 2.2 million

9:21:23AM 1 votes were casts, I believe, in the 2022 election, so you would  
2 be talking about --  
3 Q. 2200?  
4 A. 2200, right.

9:21:29AM 5 Q. Okay. And so if -- so that's 2200. That's their best  
6 estimate. But then if you were to take 3 percent of that -- or  
7 I guess it was just a negative 3 percent effect on turnout,  
8 right, would be 3 times 2.2, so you are talking about 66,000,  
9 right?

9:21:46AM 10 A. It would be .03 times 2.2 million and -- I am not going to  
11 do that in my head on the stand, but I trust that you did that  
12 right.

13 Q. I am doing it on the fly here, too. But okay. I think  
14 that's right. Right? If we just move the decimals?

9:22:04AM 15 A. And if you were going to do the upper bound, it also means  
16 they can't rule out, you know, .021 times 2.2 million  
17 additional votes as a result of this.

18 Q. Okay. The reason I am belaboring this is because I just  
19 think it's important for those of us, like me, who don't work  
9:22:18AM 20 with statistics every day, to understand what this all means.  
21 So, you know, minus .1 percent can still be 2200 votes in an  
22 election with 2.2 million voters. If you take a larger  
23 presidential election, say, I think there were 3.4 million  
24 voters in the 2020 election, you are looking at 3400 voters.

9:22:38AM 25 So we're still talking about thousands of voters under this

9:22:42AM 1 specification with a potential -- within bounds that could go  
2 up to, you know, tens of thousands, twenty of thousands of  
3 voters?

4 A. In either direction.

9:22:50AM 5 Q. Yeah, okay. So then let's go to the end -- glad we are  
6 done with statistics now, I think. So let's go to the end of  
7 their article and what they conclude sort of based on this  
8 assessment.

9 MR. BABBITT: Stephen, this is going to be 547-39 and  
9:23:10AM 10 -40.

11 BY MR. BABBITT:

12 Q. And so at the end they say in their conclusion: Contrary  
13 to the argument used by the Supreme Court in the 2000 case  
14 *Crawford versus Marion County* to uphold the constitutionality  
9:23:25AM 15 of the early strict ID laws, we find no significant effect on  
16 fraud or public confidence in election integrity. This result  
17 weakens the case for adopting such laws in the first place.

18 You disagree with that, right?

19 A. I certainly disagree with at least part of it. So if you  
9:23:44AM 20 look at the estimates on -- you know, they are measuring  
21 effects on detected fraud, I think is the right way from these  
22 two different databases, and, you know, the precision we just  
23 talked about on the main estimates, like a couple of percentage  
24 points on either side, that's reasonably precise in this world.

9:24:07AM 25 They, you know, when they start looking at -- when

9:24:10AM 1 they start looking at effects on detected fraud, I mean, they  
2 can't reject that detected fraud went to zero, and they  
3 can't -- for one measure. And I think for the other measure  
4 they can't rule out the possibility that it went down by 50  
9:24:23AM 5 percent.

6 So the bottom line is, it's just not -- there aren't  
7 very many incidents of detected fraud. Whether or not that  
8 means there's little fraud, open question. But I think the  
9 estimates there are really uninformative, and so that's why I  
9:24:36AM 10 think they are overstating their case a bit right here.

11 Q. Okay. So just to sort put a stamp on this, so the first  
12 half of the analysis you believe -- kind of gets the Mark  
13 Hoekstra seal of approval, but the second half of the analysis  
14 you just feel like the empirical methods aren't sensitive  
9:24:53AM 15 enough to allow them to reach their conclusions and so it  
16 doesn't get the seal of approval?

17 A. They are using the same method, and so I don't have a  
18 problem with the method. It's just that sometimes a method  
19 gives you an estimate that's like so imprecise, it has so much  
9:25:06AM 20 statistical uncertainty, that it's really not useful. And when  
21 you can't rule out that detected fraud goes to zero as a result  
22 of this, like that's a problem.

23 I think the second thing, which we've talked about  
24 before, is that when you are looking at the impact of laws like  
9:25:21AM 25 voter identification on turnout, on actual voting, you don't

9:25:24AM 1 have to be aware of that law to be impacted by it.

2 So if you don't have ID, it doesn't matter if you are  
3 not aware, you still going to have to show ID, and you are  
4 going to detect an effect on turnout. When you start talking  
9:25:37AM 5 about perceptions, now we really want people to know what the  
6 law is.

7 Because if people in states with laws don't realize  
8 that the law is in place, then you wouldn't expect to see  
9 effects on perceptions, and there is some evidence that that's  
9:25:51AM 10 true because we've looked through those survey experiments  
11 where, yeah, everybody was subject to the same law but clearly  
12 not everybody knew that, because when you made that law salient  
13 to some people, they responded by being sometimes more likely  
14 to vote and also sometimes having, you know, more positive  
9:26:10AM 15 perceptions about election integrity. So I think that's the  
16 other limitation of that result in this study.

17 THE COURT: I want to ask you a question about public  
18 confidence, because you also disagree that you can draw this  
19 conclusion from the data that they looked at.

9:26:29AM 20 THE WITNESS: On the public confidence?

21 THE COURT: That there was no significant effect on  
22 public confidence.

23 THE WITNESS: So that's a true fact. So they found no  
24 effect on, you know, self-reports of public confidence. I  
9:26:40AM 25 think the main limitation with that result is what I just said,



9:26:44AM 1 which is, that's only a meaningful result if you believe people  
2 are really well informed about the fact that the law changed in  
3 their state.

4 THE COURT: But wouldn't -- based on this article,  
9:26:57AM 5 wouldn't all of the people that voted know there was an ID law  
6 because everybody that voted had to show it?

7 THE WITNESS: Yeah, the issue is most of these states  
8 had non-strict ID laws anyway, right? So even in the  
9 pre-period, this study is looking at the impact of strict voter  
9:27:18AM10 identification, and the difference between strict and  
11 non-strict if you vote in the non-strict, they are going to ask  
12 me for my ID, and most people are going to show it to them  
13 because you have it, right?

14 The issue is if you don't have that ID and it is a  
9:27:29AM15 non-strict law, then they'll still count your vote under some  
16 circumstance -- like basically if you sign an affidavit, you  
17 know, they will count your vote. In other places they'll do  
18 it, so the only people who would be aware that it's like a  
19 non-strict law would be those people who -- those people who  
9:27:47AM20 didn't show ID.

21 And in the post period, the only people who would  
22 really be aware that it was a strict law and not a non-strict  
23 law, would be the people who didn't have ID and then they were  
24 told, by the way, in order for your vote to count, you need to  
9:28:01AM25 show ID somewhere soon, like in the next couple of days.

9:28:05AM 1 THE COURT: So your research shows that before strict  
2 ID laws were passed, when people went to the polls to vote,  
3 they had -- they were asked to show ID?

4 THE WITNESS: Most states -- I am not going to have  
9:28:17AM 5 the number off the top of my head, but most of these states had  
6 non-strict laws in place. And so the treatment here is mostly  
7 states going from non-strict laws to strict laws.

8 So they all had -- they all asked you for  
9 identification, the question is, was that -- did you literally  
9:28:34AM 10 have to show identification as the only way for your vote to  
11 count? And that's true under a strict law. But that wasn't  
12 true under non-strict law. You could sign an affidavit or they  
13 would match your signature to your voter registration. Those  
14 are two that I am aware of. There may have been other systems  
9:28:50AM 15 for doing that.

16 THE COURT: Let me go back to fraud. You said their  
17 definition was detected fraud.

18 THE WITNESS: That's right.

19 THE COURT: Which is hard to find.

9:29:05AM 20 THE WITNESS: Presumably, yeah.

21 THE COURT: What other measure could there be?

22 THE WITNESS: Fair enough.

23 THE COURT: Assumed fraud? Imaginary fraud?

24 THE WITNESS: Yeah, I don't blame the authors for  
9:29:14AM 25 looking at that to be clear. Like they're looking at the best

9:29:17AM 1 measure of fraud that they could find, and there's two  
2 databases and they use them as an outcome.

3 I'm not -- you know, I don't mean to be criticizing  
4 the authors for doing the exercise. I think the problem is  
9:29:29AM 5 that when you look at their corresponding estimates from that,  
6 those confidence intervals that we talked about, they are so  
7 wide. There is so much statistical uncertainty about their  
8 resulting zero estimate that they wouldn't be able to rule out  
9 that detected fraud went to zero as a result of these laws.

9:29:48AM 10 And that's like -- it's an imprecise zero. It is an  
11 uninformative answer.

12 And again, I don't blame them for doing it. Like it's  
13 perfectly reasonable to do it. In fact I won't be surprised if  
14 reviewers were like, hey, I want you to do this, this is an  
9:30:03AM 15 important question, and so they do it.

16 I do think they are overstating their case a bit right  
17 there because the bottom line is they don't have enough  
18 precision to detect the magnitude of reductions and detected  
19 fraud that you might expect from a policy like this.

9:30:18AM 20 THE COURT: Mr. Babbitt.

21 BY MR. BABBITT:

22 Q. So focusing on that point right there, in your report --

23 MR. BABBITT: And Stephen, if we could pull up DX900  
24 at page 6? Let's go to paragraph 14.

25

9:30:30AM 1 BY MR. BABBITT:

2 Q. So you say, right, about two-thirds of the way down in  
3 paragraph you say: Clearly one potential benefit of HB 2243  
4 and HB 2492 is to reduce perceptions of fraud, which would, in  
9:30:44AM 5 the view of another plaintiffs' expert, cause individuals to be  
6 more likely to vote.

7 But based on your colloquy with Judge Bolton just now,  
8 it seems the emphasis here should not be on "clearly," but  
9 rather "potential." Because the only way this could reduce  
9:30:59AM 10 perceptions of fraud is, one, if people knew about the laws,  
11 and two, those people were persuadable these laws would in fact  
12 put their concerns to rest; is that right?

13 A. So I mean, I think the sentence as I -- I'm making it clear  
14 there was a potential benefit. I think that's a fair  
9:31:15AM 15 characterization. I agree it's potential benefit. It's not a  
16 certainty.

17 Q. Great. And so let's move to to the final --

18 THE COURT: Why would this be any different than  
19 strict voter ID laws to not affect public confidence because  
9:31:35AM 20 there's no evidence that people knew about them?

21 THE WITNESS: Yeah, I think this is -- I think one  
22 question is, you know, in part because of the lawsuits and so  
23 on, people probably don't know about them right away. Overtime  
24 perhaps people learn and so you might expect bigger effects  
9:31:52AM 25 overtime as people learn.

9:31:54AM 1 It also depends on how that information gets  
2 disseminated in a rational world, you know, both parties would  
3 be interested in trying to, you know, convince people that  
4 there are safeguards in place, you know, to prevent these sorts  
9:32:05AM 5 of things that in Arizona roughly 700,000 people think that,  
6 you know, it's very common for non-citizen voting.

7 And, you know, it's true if people don't learn about  
8 it it's not going to change perceptions, but -- you know, but  
9 overtime presumably there's some chance that can happen.

9:32:23AM 10 Q. Potential, some chance, requires people to learn about it  
11 and be persuadable, those are all variables that would need to  
12 be, you know, turning the right way for this to have an effect?

13 A. I think that's right.

14 Q. Okay. So at the very end of the Cantoni and Pons article,  
9:32:40AM 15 they -- their big conclusion is that for now there's a real  
16 need to improve the administration of U.S. elections, including  
17 voting technology and increase faith in elections, but strict  
18 ID laws are unlikely to do that. At the same time, low and  
19 unequal participation represent real threats to democracy, but  
9:32:59AM 20 these may be more effectively addressed by reducing other  
21 barriers to voting such as registration costs.

22 So my question is, do you agree with their conclusion?  
23 Do you disagree with their conclusion? Or as an economist, do  
24 you simply have no opinion one way or the other?

9:33:22AM 25 A. Yeah, I think that first sentence that they write there,

9:33:25AM 1 they're basing it on those results on both, you know, what is  
2 the effect of these laws on detected election fraud and on  
3 perceptions.

4 And as I said, when you think about actual, the  
9:33:37AM 5 problem is, they don't have a precise answer for that, so we  
6 don't learn much from the study. So I don't think that should  
7 be a basis for making an assessment on this question one way or  
8 another because it's just not informative.

9 The other thing that's relevant for both of them is  
9:33:53AM 10 obviously, if you think -- you know, I think in a world where  
11 there's less ambiguity about whether these laws were in effect,  
12 which is hard given there's all the lawsuits. I mean, the  
13 lawsuits and the -- you know, the Court does this, and then it  
14 gets overturned. That makes it hard for people to learn.

9:34:09AM 15 You know, if that were -- in the long run, I suspect  
16 people can learn with -- at least with education interventions  
17 and so on, and I presented evidence on that from these audit  
18 studies.

19 But I think those are the two limitations of that, and  
9:34:24AM 20 so again, I think on that first part, I mean, they are saying  
21 it's unlikely. I don't know exactly what they mean by  
22 unlikely, but in general I think they're overstating their case  
23 because it's based on those results.

24 Q. And so you're essentially passing on this issue? You are  
9:34:36AM 25 not offering an opinion that -- one way or the other on this?

9:34:39AM 1 You think -- I'll leave it at that.

2 A. I think they don't have good evidence to say it one way or

3 the other on the basis of their paper.

4 Q. And you're not pretending -- excuse me. You are not

9:34:52AM 5 purporting to provide better evidence one way or the other?

6 A. I mean, I've certainly reported some evidence to suggest

7 that. For example, the Florida study, these people were

8 obviously aware of this attempt to crack down on registrations.

9 They were more likely to vote. I presented evidence on the

9:35:10AM 10 audit studies that when people are made more aware of these

11 things, they can be more likely to vote and sometimes, you

12 know, improved perceptions. So I have presented that evidence,

13 and I think that's informative for this.

14 Q. Okay. I think we can leave Cantoni and Pons from my

9:35:25AM 15 perspective and move on to Komisarchik and White, which is

16 another article that you discussed with Mr. Langhofer

17 yesterday.

18 So as you may recall and the Court may recall, this

19 was an article assessing the effects of the elimination of the

9:35:40AM 20 preclearance requirement on voting. Does that ring a bell?

21 A. Yes.

22 Q. And you in -- basically, as I understand it, you criticized

23 Dr. Burch for not relying on this article or not acknowledging

24 this article, which as I understand it, is in working paper

9:35:58AM 25 form but has been accepted for publication, according to the

9:36:01AM 1 authors; is that right?

2 A. It's under revision for publication but it has -- to my  
3 knowledge, it hasn't been formally accepted, but I haven't  
4 looked in the last week or two.

9:36:11AM 5 Q. And you agree that what Komisarchik and White are focused  
6 on there are the net effects on voter turnout with respect to  
7 the restrictive laws that were introduced after the elimination  
8 of free clearance, right?

9 A. In general, it's going to be true for any of these studies,  
9:36:31AM 10 that they're going to pick up the net effects on the population  
11 that they study, and that's of course going to be true here as  
12 well.

13 Q. Okay. And so let's turn to -- actually, I think that's  
14 probably enough there.

9:36:56AM 15 And so I would like to move on for -- move on to the  
16 psychological costs of the -- these laws at issue in this case  
17 impose on voters.

18 In your report, and I believe in your discussion with  
19 Mr. Langhofer yesterday, you said that -- you questioned the  
9:37:15AM 20 research that Professor Burch relies on because you didn't  
21 think that it either was reliable or that it didn't actually  
22 speak to the question of whether psychological costs affected  
23 participation in government programs by the individuals studied  
24 or the group study; is that fair?

9:37:33AM 25 A. I think that's right. I don't recall the studies offhand,



9:37:35AM 1 off the top of my head. I know we have been talking about a  
2 lot of different ones, and it would be helpful if we could get  
3 a refresher on what that was.

4 Q. Well -- so I think this can be pretty quick because you may  
9:37:45AM 5 remember in your deposition, I asked you whether you reviewed  
6 any of the studies cited in footnotes 34, 35, and 36 of  
7 Professor Burch's report. Do you recall that discussion two  
8 weeks ago?

9 A. No.

9:38:02AM 10 Q. All right. Let's see if we can pull that up.

11 MR. BABBITT: And Stephen, it's Professor Hoekstra's  
12 deposition transcript at 291, lines 6 through 17.

13 Professor Hoekstra's deposition transcript, 291, lines  
14 6 through 17.

9:38:39AM 15 BY MR. BABBITT:

16 Q. So I asked you whether -- well, whatever. This speaks for  
17 itself, but I am happy to read it.

18 A. Okay.

19 Q. So I asked you whether you had read the articles that she  
9:38:53AM 20 cites in footnotes 34, 35, 36. And you said: Yeah, I  
21 believe -- yeah, if I didn't write it, I didn't write about  
22 them, then I'm certainly not planning on making a -- not having  
23 an opinion about those articles in this case.

24 And so I just want to make clear that you are not  
9:39:09AM 25 addressing the articles that she cites in those footnotes?

9:39:15AM 1 A. Can you show me the footnotes?

2 Q. Sure.

3 MR. BABBITT: Stephen, this will be the Burch report.

4 Can we go do footnotes 34, let's see where those come up. It's

9:39:26AM 5 going to be page 8 of her report -- 7 and 8. Those are really

6 small. Sorry, 7 and 8 of the report, so yeah, there we go.

7 Pedraza.

8 BY MR. BABBITT:

9 Q. Alsan, Watson, Becerra. I don't see any of those cited in

9:40:08AM 10 your report. I don't recall you discussing those with

11 Mr. Langhofer yesterday. Fair to say you have no response to

12 them?

13 A. That's correct.

14 Q. While we are in this neighborhood, let's move on to

9:40:24AM 15 Professor Burch's reliance on the Census Bureau's report here,

16 which comes up?

17 MR. BABBITT: Stephen, this will be 328, page 9.

18 BY MR. BABBITT:

19 Q. Top paragraph, the sentence on the left that begins:

9:40:42AM 20 Research also shows that both black and Latino householders

21 resist responding to the census because of, quote, concerns

22 about confidentiality, deportation, and their general trust in

23 government.

24 I believe you do address this one, right?

9:41:04AM 25 A. That's right.

9:41:05AM 1 Q. And so that article seeks to identify factors. It was  
2 produced -- it was written by individuals working at the Census  
3 Bureau, correct?  
4 A. I don't recall where they were employed. I think -- is the  
9:41:21AM 5 Terry paper?  
6 Q. Exactly.  
7 A. Yeah, I just don't remember where.  
8 Q. We can get to that in a moment, but they were -- I do  
9 believe they were employed by the Census Bureau and this was  
9:41:29AM 10 their work.  
11 So the article seeks to identify factors affecting  
12 census participation, what they refer to as "enumeration" among  
13 different racial and ethnic groups; is that right?  
14 A. I think that's right.  
9:41:41AM 15 Q. Okay.  
16 MR. BABBITT: Stephen, let's pull up PX566-1.  
17 BY MR. BABBITT:  
18 Q. So this is that article? This is the Terry article?  
19 A. Yes.  
9:41:57AM 20 Q. And you see that they are working at the U.S. Census  
21 Bureau. And in -- the first paragraph is in French because  
22 this was published in Europe, but at the bottom in the English  
23 version of the abstract it says: This article presents  
24 findings from a 2010 census ethnographic evaluation with a  
9:42:18AM 25 record check conducted to identify factors affecting

9:42:21AM 1 enumeration, meaning being counted in the census, among racial  
2 and ethnic groups.

3 Does that refresh your recollection or is at least  
4 consistent with your recollection?

9:42:30AM 5 A. Yes.

6 Q. And yesterday in your discussion with Mr. Langhofer, you  
7 said that the article was cited -- that Dr. Burch cited it to  
8 support the proposition that black and Hispanic voters -- or  
9 people's fears of immigration-related consequences affected  
10 their census response.

11 Is that -- do you recall that?

12 A. Yes.

13 Q. But it's actually looking at something much broader, right?  
14 It's not just about their fear of immigration consequences.

9:42:59AM 15 It's about the consequences of engaging with the government and  
16 law enforcement generally, right?

17 A. Well, if we read the sentence that Professor Burch wrote,  
18 she wrote "fear of deportation" in that sentence in reference  
19 to both black and Latino households.

9:43:14AM 20 Q. So let's go to Professor Burch's report, which is --

21 MR. BABBITT: Stephen, this will be PX328-9. And it's  
22 the top paragraph, eight lines down.

23 BY MR. BABBITT:

24 Q. Research also shows that black and Latino householders  
9:43:33AM 25 resist responding to the census because of concerns about

9:43:35AM 1 confidentiality, deportation, and their general trust in  
2 government.

3 This isn't just about deportation or  
4 immigration-related consequences, right? She is quoting the  
9:43:44AM 5 study.

6 A. Well, she's quoting the study with respect to Latino  
7 householders, but the study didn't claim that, you know, that  
8 black householders resisted due to fears -- due to concerns  
9 about deportation. And, you know, those are concerns. It's  
9:44:00AM 10 not about concerns about confidentiality or deportation or  
11 general trust, it's "and."

12 Q. But -- I mean, she's -- both black and Latino householders  
13 resist responding to the census because of a set of concerns,  
14 concerns about confidentiality, deportation, and their general  
9:44:18AM 15 trust in government, right? This is two groups with three sets  
16 of concerns, right?

17 A. Sure. I mean, if you want to say -- you know, perhaps you  
18 want to -- you'd acknowledge that that's misleading in the  
19 sense that there's no in evidence in that paper that black  
9:44:34AM 20 householders resisted responding because of fears of  
21 deportation.

22 Q. But they would have resisted -- they could have resisted  
23 for fears of confidentiality in their general distrust in  
24 government, or deportation, right? I mean, there's no reason  
9:44:49AM 25 to think that black householders wouldn't be just as concerned

9:44:51AM 1 about deportation-related consequences based on their own  
2 family history and circumstances, right?  
3 A. No, the article never said that. Like, that's the problem.  
4 Like, she is citing something as though the article said  
9:45:03AM 5 something, and it didn't.  
6 Q. So let's go to that section of the article.  
7 MR. BABBITT: So Stephen, this is going to be PX566,  
8 11. Bottom paragraph here. Another cultural issue was  
9 respondent resistance to participating in the census due to  
9:45:27AM 10 concerns about confidentiality, deportation, and their general  
11 distrust in government.  
12 That's the part that Professor Burch is quoting,  
13 right?  
14 A. Correct, and then she goes on talking about Hispanics, not  
9:45:39AM 15 black people.  
16 Q. Well, let's go down halfway through the paragraph.  
17 As in the Hispanic side, respondent concealment and  
18 distrust of the government were found in some cases of  
19 inconsistency in the African American side too. These examples  
9:45:54AM 20 of respondent resistance and concealment, highlight the impact  
21 of social and cultural motivations that can be independent of  
22 questionnaire wording, right?  
23 So these are two groups where the Census Bureau found  
24 that the concern about -- whether it's deportation,  
9:46:08AM 25 confidentiality, or general trust in government, they were

9:46:10AM 1 affecting these groups' decision to participate in the census.  
2 That's what this is finding, right?

3 A. I mean, I think a literal interpretation of the sentence  
4 that she wrote is that black people were -- had fears of  
9:46:25AM 5 deportation, and she is attributing that to the study, and the  
6 study isn't saying that. That's all I am pointing out in that  
7 part of my report.

8 Q. That's -- all you are doing is thinking --

9 A. With respect to the black, Hispanic issue, yes.

9:46:39AM 10 Q. And your view is that that concern might not arise or  
11 wouldn't arise in the black community?

12 A. I mean, I think you should only cite things that you have  
13 evidence for, and she's attributing that assertion to this  
14 article, and there's no support for that assertion in this  
9:46:54AM 15 article, as shown in the paragraph you have on the screen.

16 Q. All right. I think we're just -- at this point we're just  
17 sort of debating how to apply the topic sentence of this  
18 paragraph, you know, to the different groups that are covered  
19 by it. I am not sure it's worth belaboring this point.

9:47:16AM 20 And -- let's talk about some of the sources of  
21 concerns.

22 MR. BABBITT: Stephen, we can leave that exhibit up --  
23 BY MR. BABBITT:

24 Q. And talk about where those concerns about the psychological  
9:47:30AM 25 effects came from.

9:47:31AM 1           And if we go to -- carry over on -- if you go to the  
2           very bottom of this page, the paragraph says: The wider social  
3           context also has an important role in enumeration, meaning  
4           being counted in the census, right, just before the NRFU  
9:47:50AM 5           enumeration program started in 2010, a very strong  
6           anti-immigration law passed in Arizona that coincided with  
7           legal ordinances in two Dallas area studies. These ordinances  
8           were aimed at identifying illegal immigrants through police  
9           stops or the reporting of immigration status of applicants  
9:48:09AM 10          wishing to rent apartments. The new law provoked heightened  
11          tensions around the country. Right?

12                    So the census' finding is that these anti-immigrant  
13          policies can sort of spill over into the census context and in  
14          effect the ability of certain demographic groups to participate  
9:48:26AM 15          in something as benign as the census, right? That's what the  
16          Census Bureau is finding?

17          A. The Census Bureau is particularly worried about that in the  
18          context of non-citizens. And I think one of the problems I  
19          have with Professor Burch's report is she doesn't make clear  
9:48:39AM 20          that these concerns -- I mean, it's fair for the census to  
21          worry about whether non-citizen are going to be -- have this  
22          psychological cost, right, but if you are thinking about a  
23          psychological cost on voters in Arizona, well, non-citizens  
24          shouldn't be voting in Arizona. So that distinction is a  
9:48:57AM 25          really important distinction.



9:48:59AM 1 Q. But this isn't limiting the findings. This is saying,  
2 these are concerns among the black and Latino community, not  
3 just among non-citizens within that community?

4 A. Yes, but there are non-citizens in that community who are  
9:49:12AM 5 rationally to be more concerned, whereas citizens ought  
6 rationally be much less concerned about things like  
7 deportation.

8 Q. Well, look, I think we heard last week -- I realized you  
9 weren't here -- from fact witnesses who are much more sensitive  
9:49:25AM 10 to these issues than certainly I could be. And so I think I  
11 will leave it at that and turn you over to Mr. Langhofer for  
12 any redirect that he has.

13 Thank you for your time.

14 MR. LANGHOFER: Good morning, Your Honor.

9:49:51AM 15 REDIRECT EXAMINATION

16 BY MR. LANGHOFER:

17 Q. And good morning again, Professor. I have just a few  
18 questions for you. Let's pick up where we left off with  
19 Mr. Babbitt.

9:50:01AM 20 The Terry study, who apparently was working for the  
21 census, did that study conclude that the fears of deportation  
22 were -- in concluding that there were fears of deportation, was  
23 that limited to citizens or non-citizens? Was it  
24 distinguishing between those groups when saying there was this  
9:50:23AM 25 fear?

9:50:26AM 1 A. It didn't attempt to distinguish between those groups. And  
2 obviously we'd expect those fears to be greater among  
3 non-citizens than citizens and arguably nonexistent among  
4 citizens.

9:50:36AM 5 Q. Sticking with the census, is the -- the census data  
6 regarding citizenship, how is that regarded in the academic  
7 community?

8 A. I mean, it's regarded as reasonable. And again, the big  
9 key there is that census won't ask you whether you're  
9:50:53AM 10 undocumented or not. And I mean, we had a census data research  
11 center on campus at A&M, and if you proposed anything where you  
12 wanted to look at undocumented immigrants, they were like, no,  
13 it's a no-go, because they were super worried about people  
14 answering questions correctly on the census. And so they don't  
9:51:13AM 15 have -- you know, they ask about citizenship. And the reason  
16 why we think people likely tell the truth there is because  
17 they're so protective of that, and they are so protective of  
18 making sure that undocumented immigrants feel comfortable, you  
19 know, responding and responding honestly to census surveys.

9:51:32AM 20 Q. Do you recall whether Professor McDonald relied on census  
21 data regarding citizenship? If it helps, I can --

22 A. Yeah, you might want to pull it up, because I'm having a  
23 hard time recalling everything.

24 MR. LANGHOFER: Elaine, can I have the laptop?

25

9:51:51AM 1 BY MR. LANGHOFER:

2 Q. We are going to look at the McDonald report, page 16. Does  
3 that help you recall?

4 A. That's right. So he's using data in particular on  
9:52:13AM 5 naturalized citizens in the U.S., and that comes from the  
6 census. That comes from the census asking people about their  
7 citizenship status.

8 Q. Do you recall whether Professor Burch relied on the U.S.  
9 Census data regarding citizenship? And I can see your eyes  
9:52:27AM 10 going to the corner of the room, so I'll point you to the Burch  
11 report on page 23.

12 A. Yeah. So again there it is from the same survey as that  
13 Medicaid study used. It's American -- it's the American  
14 Community Survey from the census, and she is using it to look  
9:52:50AM 15 at naturalized citizens, which again comes from asking people  
16 about their citizenship status. And again, I think there's  
17 every reason researchers believe that's a reliable source of  
18 data on that.

19 Q. So you said the Medicaid study. I want to be clear about  
9:53:05AM 20 this. So when Professor Sommers from Harvard Medical School  
21 conducted his study on DPOC implementation in the Medicaid  
22 context, was he drawing his citizenship information also from  
23 the census?

24 A. Yes, the same survey as you see here.

9:53:22AM 25 Q. I want to talk to you about this idea -- sticking with

9:53:26AM 1 Professor Sommers' study, this idea of delayed implementation.  
2 It could be few months to up to a year. I want to pull that up  
3 on screen, Exhibit 944 marked but not identified.

4 And we're going to look at -- on cross-examination  
9:53:42AM 5 with Mr. Babbitt, you looked at the top two charts. I want to  
6 point your attention to the bottom left-hand chart, the  
7 non-citizens.

8 How long was it from the implementation of the policy  
9 until you start seeing significant increases -- or excuse me,  
9:53:57AM 10 decreases in non-citizen enrollment?

11 A. So most of that is happening in the second year.

12 Q. You were asked also by Mr. Babbitt about the Cato sort of  
13 publication summarizing your previous publication on election  
14 laws, and you cited a survey in that study. I would like to  
9:54:26AM 15 pull it up, let you read it, and then ask you the purpose that  
16 citation to the survey was serving in your article. So this is  
17 Exhibit 548. We are on page 2.

18 If you could read that, and then let me know when you  
19 are done, I'll scroll a little bit so you can finish.

9:55:30AM 20 A. I have read it.

21 Q. Okay. For what purpose were you citing the survey  
22 indicating that nearly 7 percent of citizens may not have ready  
23 access to DPOC?

24 A. Yeah, these surveys typically would be cited by critics of  
9:55:44AM 25 these strict voter identification laws. And they would say,

9:55:48AM 1 well, you know, look -- there's some survey evidence to suggest  
2 that a lot of people don't have IDs. And as a result, there  
3 were concerns that there would be a large number of people then  
4 who might not be able to vote if they weren't able to get an ID  
9:56:00AM 5 in time.

6 And, you know, that's -- again, it's a concern  
7 expressed by critics. You often, you know, lay out concerns  
8 expressed by different sides of an issue when you write a  
9 paper.

9:56:15AM 10 Ultimately here, we find estimates that are much, much  
11 smaller, and so essentially there's two different  
12 interpretations for why -- you know, why do we find that at  
13 most, roughly .1 percent of voters, and that's an upper bound,  
14 at most .1 percent of voters could have been -- could have not  
9:56:34AM 15 cast a vote if one of these laws were passed.

16 THE COURT: Excuse me, a minute. You said "we," and  
17 I'm not sure I know who "we" found are.

18 THE WITNESS: I'm sorry. My co-author and I in our  
19 publication on, you know, strict voter identification laws.

9:56:50AM 20 BY MR. LANGHOFER:

21 Q. This is the one we discussed yesterday, it was Texas and  
22 another state?

23 A. It was Florida and Michigan.

24 THE COURT: Did you -- I want to focus a moment on  
9:57:02AM 25 this survey report that said that 7 percent of U.S. citizens

9:57:08AM 1 did not have ready access to documentary proof of citizenship.  
2 Did you do anything to find out if that was so or not?  
3 THE WITNESS: I -- can you say the last -- I missed  
4 the last word or two.

9:57:21AM 5 THE COURT: When you wrote your paper.  
6 THE WITNESS: Yes.  
7 THE COURT: Did you find some different number for  
8 lack of ready access to proof of citizenship?  
9 THE WITNESS: We didn't attempt to do that directly.

9:57:36AM 10 Instead -- sorry, go ahead.  
11 THE COURT: What you found had to do with whether you  
12 had sufficient ID to satisfy a strict voter ID law, and you  
13 found those estimates from this survey to be much higher than  
14 your findings.

9:57:54AM 15 THE WITNESS: Correct. We found in practice in two  
16 different states there were very few voters who did not show a  
17 valid ID to vote, even though it was possible to do so in those  
18 states because they had non-strict laws. Like the fraction of  
19 voters doing that and the numbers were just really tiny.

9:58:12AM 20 And so there's two explanations to sort of reconcile  
21 our finding with those surveys. One is, it's possible those  
22 surveys are wrong. That's a possibility. And the other  
23 possibility is that perhaps there are people who don't have  
24 access to IDs, but maybe those people in practice just never  
9:58:31AM 25 choose to vote, even when they can.

9:58:33AM 1 And so as a practical issue, it's a nonissue. I don't  
2 know which of those -- we are not making claims about which of  
3 those two potential explanations are correct, but we're  
4 obviously very confident in our numbers because they're  
9:58:46AM 5 literally just counts of people who cast these ballots, you  
6 know, without ID. They cast provisional ballots in Michigan  
7 and Florida. And there's just not very many of them. And  
8 that's the set of people who could potentially be impacted by  
9 these laws, much smaller than what these surveys would lead you  
9:59:05AM 10 to believe.

11 BY MR. LANGHOFER:

12 Q. When the survey concluded that up to seven people -- or 7  
13 percent of people -- approximately 7 percent of people didn't  
14 have ready access to these documents, do you know whether they  
9:59:15AM 15 were including driver's licenses among the documents?

16 THE COURT: I'm sorry. You are asking the question  
17 but what I read was -- a sentence that talked about 7 percent  
18 of people without ready access to documentary proof of  
19 citizenship, which is -- I don't think is the same as having  
9:59:35AM 20 identification to vote.

21 MR. LANGHOFER: I agree with you in theory, Your  
22 Honor. I am trying to get to the bottom of that issue.

23 THE COURT: Okay. Go ahead.

24 BY MR. LANGHOFER:

9:59:44AM 25 Q. So when the survey was concluding that nearly 7 percent of

9:59:49AM 1 U.S. citizens did not have ready access to DPOC, Documentary  
2 Proof of Citizenship, was the survey contacting as DPOC a  
3 driver's license?  
4 A. I don't recall, to be honest. I haven't gone back and  
10:00:03AM 5 looked at that survey. And we wrote the paper several years  
6 ago, and I think ultimately that got cut out of the published  
7 paper to shorten it down.  
8 Q. Okay. You talk --  
9 A. Let me say one more thing. I believe this would have been  
10:00:21AM 10 pulled from the full-length paper. And so the place to go for  
11 the full citations as opposed to this research brief which is  
12 meant for a more, you know, lay audience, the NBER version of  
13 the paper would have had those citations, and that's where I  
14 would go back to look if I were to look.  
10:00:41AM 15 Q. You talked with Mr. Babbitt a bit about Cantoni and Pons'  
16 conclusions such as they were about informational effect on  
17 voter confidence.  
18 In the Biggers and Smith study, looking at the Florida  
19 voters who were notified that their registration may be  
10:01:03AM 20 challenged, were the voters in that study made aware of the  
21 laws and its potential effects on them?  
22 A. When you say, were they made -- were they made aware of  
23 what laws, the laws regarding citizenship?  
24 Q. The laws that may have invalidated their registration based  
10:01:23AM 25 on citizenship?



10:01:24AM 1 A. I believe they would have become aware if they weren't  
2 directly aware of that letter.  
3 Q. Because they received two letters in fact?  
4 A. Exactly.

10:01:31AM 5 Q. What happened to the voters who became aware of it in that  
6 study? What happened to their turnout rates?  
7 A. So their turnout rates increased relative to others.  
8 Q. Was it statistically significant?  
9 A. It was, and it was relatively large. I think it's several  
10:01:45AM 10 percentage points.  
11 Q. Last question.  
12 MR. LANGHOFER: Elaine, if I could have the podium  
13 laptop one more time, please?  
14 BY MR. LANGHOFER:

10:01:51AM 15 Q. We are going to look now to Exhibit 952. This is Cantoni  
16 and Pons. Oh, let's ignore the overhead for a moment.  
17 Cantoni and Pons, the 1.6 billion observation study.  
18 Was there any -- for how many ethnic groups was there a  
19 statistically significant change in turnout when the voter ID  
10:02:25AM 20 laws were implemented?  
21 A. Just one, it was Hispanics.  
22 Q. And was that change positive or negative?  
23 A. It was positive. Hispanics were more likely to vote after  
24 states moved from non-strict to strict voter identification  
10:02:38AM 25 laws.

10:02:39AM 1 Q. Any other subgroups with a statistically distinguishable  
2 from zero effect on turnout?  
3 A. No, none.  
4 MR. LANGHOFER: No more questions, Your Honor. Thank  
10:02:50AM 5 you.  
6 THE COURT: May this witness be excused?  
7 MR. LANGHOFER: Yes.  
8 THE COURT: Is there any objection?  
9 MR. BABBITT: No objection.  
10:02:55AM 10 THE COURT: Thank you, sir. You may step down, and  
11 you are excused as a witness.  
12 Defendants may call their next witness.  
13 MR. DODGE: Was the Court interested at all in hearing  
14 a few matters of housekeeping or would the Court like to wait?  
10:03:14AM 15 THE COURT: Is it -- does it have any time  
16 sensitivity?  
17 MR. DODGE: Not particularly. It is in the interest  
18 of making sure we get this all wrapped up tomorrow.  
19 THE COURT: Let's have our next witness.  
10:03:24AM 20 MR. DODGE: Okay.  
21 MR. HERRERA: Well, Your Honor, there may be one  
22 matter that's time-sensitive, only because it involves another  
23 witness to be called -- expected to be called tomorrow;  
24 therefore, I think, out of fairness to that witness, I think  
10:03:41AM 25 this issue might be best raised now earlier in the day, if

10:03:45AM 1 that's okay?

2 THE COURT: Go ahead.

3 MR. HERRERA: Thank you, Your Honor. Good morning,  
4 Your Honor. Ernest Herrera for the Promise Arizona plaintiffs.

10:03:55AM 5 We wanted to raise one important issue about a witness dispute  
6 that crystallized yesterday.

7 Last night at 11:00, RNC's counsel sent us transcripts  
8 and videos that they want to use in a second cross-examination  
9 of Senator Quezada, who was on the stand last week -- former  
10:04:11AM10 Senator.

11 RNC counsel had informed plaintiffs at the conclusion  
12 of trial yesterday that these materials might be used. These  
13 are legislative hearing videos regarding the Challenged Laws  
14 and the 2023 hearing regarding Mr. Quezada's nomination to a  
10:04:27AM15 position by Governor Hobbs.

16 We have two issues with this. Defendants' second shot  
17 at cross is improper as a general matter, given the rules of  
18 this trial, and the anticipated topics of examination are  
19 cumulative, given that they examined Mr. Quezada about those  
10:04:44AM20 exact same topics last Thursday.

21 Your Honor will recall that after Mr. Quezada's  
22 testimony last week, defendants noted that they would, quote,  
23 think about an objection to Mr. Quezada's testimony as  
24 improperly disclosed. But over one week later they have not  
10:04:58AM25 done so, because they cannot. The witness and the subject of

10:05:02AM 1 the testimony was clearly disclosed to them in August, or were  
2 clearly disclosed.

3 Defendants' failure to file an objection should not  
4 give them a second crack at a witness on the same topics when  
10:05:12AM 5 the Court has admonished the parties that no witness will have  
6 to appear twice during trial. And the RNC retreading the same  
7 topics with Mr. Quezada, they already asked him about at length  
8 will inevitably lead to argumentative and cumulative  
9 questioning. We ask that you not allow the RNC to do this.

10:05:29AM 10 They haven't even tried to provide any grounds for  
11 this special treatment, but plaintiffs nevertheless stand ready  
12 to reexamine or to examine Mr. Quezada again as well tomorrow  
13 with our own transcripts and videos if the Court uniquely  
14 allows the RNC another bite at cross-examination for this  
10:05:45AM 15 witness.

16 THE COURT: Does defense counsel intend to re-call  
17 Mr. Quezada?

18 MR. LANGHOFER: We do, Your Honor. And the reason  
19 it's not cumulative is because there are things that are not  
10:05:56AM 20 yet in the record. We have transcripts of two committee  
21 hearings.

22 Mr. Quezada testified that, as you will recall,  
23 Senator Borrelli leaned over muted a microphone and made  
24 comments that -- the wording is now -- I don't think there's  
10:06:16AM 25 precise testimony of what exactly the wording is.

10:06:19AM 1 The only thing we have on the record so far are  
2 transcripts. We need to introduce videos because they also  
3 fail to show that Senator Borrelli leaned over and muted a  
4 microphone and spoke to Senator Quezada.

10:06:34AM 5 There's also --

6 THE COURT: Now, I assume these videos would not have  
7 audio if something were said. It would -- you just want to  
8 show the videos to show whether or not, as Mr. Quezada  
9 testified, the other legislator leaned over and appeared to  
10:06:58AM10 speak to him during the hearing?

11 MR. LANGHOFER: That's right, Your Honor. I think the  
12 audio in these videos is immaterial. It's to establish  
13 that there was no -- there appears to have been no conversation  
14 --

10:07:09AM15 THE COURT: Couldn't the two of you -- since the  
16 videos don't show what's said, will only show if it appears  
17 that something was said, couldn't you both just look at the  
18 videos and tell me, yes, there's situations where -- is it  
19 Borrelli?

10:07:29AM20 MR. LANGHOFER: Borrelli.

21 THE COURT: Borrelli leaned over and appeared to say  
22 something versus the video doesn't show that. I mean, why  
23 would I watch a silent video of -- and then see if he leaned  
24 over and spoke or didn't?

10:07:45AM25 MR. LANGHOFER: That works for us. I think that's a

10:07:47AM 1 lot more efficient use of the Court's time, and I don't think  
2 the appellate courts want to watch, you know three, 45-minute  
3 hearings from the legislature, maybe longer.

4 THE COURT: Three 45-minute hearings? Definitely  
10:07:59AM 5 don't want to watch silent video of three, 45-minute hearings.

6 MR. HERRERA: And, Your Honor, this is Mr. Herrera  
7 again. The confirmation hearing video is two and a half hours  
8 long.

9 THE COURT: Oh, I really am not going to watch that.

10:08:11AM 10 MR. LANGHOFER: For that we have a transcript, because  
11 I don't think the video is more helpful than the transcript on  
12 that issue.

13 THE COURT: But why do we need to call Mr. Quezada  
14 back?

10:08:22AM 15 MR. LANGHOFER: Well, he's the best person to  
16 authenticate these things.

17 THE COURT: We don't authenticate things unless  
18 there's a dispute about the authenticity.

19 MR. LANGHOFER: We have not received confirmation from  
10:08:35AM 20 the plaintiffs that they will not dispute authenticity and  
21 foundation.

22 MR. HERRERA: Your Honor, plaintiffs can stipulate to  
23 videos without the testimony, and we will not object to  
24 authenticity.

10:08:46AM 25 THE COURT: There we have it.

10:08:48AM 1 MR. LANGHOFER: So I think -- that works.

2 THE COURT: That doesn't make them admitted, but it  
3 saves the witness from saying, oh, yeah, that's the hearing I  
4 was talking about.

10:09:00AM 5 MR. LANGHOFER: So -- right. So I think -- then we  
6 will have the transcript from the confirmation hearing,  
7 which -- did I miss whether there's an authenticity or  
8 foundation objection to that?

9 THE COURT: I didn't hear one.

10:09:18AM 10 MR. HERRERA: Yeah, I think on the transcript, no  
11 objection there either, as long as it's not also the video.

12 THE COURT: No. The video -- I am not watching two  
13 and a half hours of video. If it's admitted, I could read a  
14 transcript in a much shorter period of time than that.

10:09:39AM 15 MR. LANGHOFER: Even then there's only so many  
16 sections of the transcript that would be helpful and obviously  
17 that's what we'll cite to when we need it.

18 There's additionally -- on the videos, I think we  
19 don't even need to have those admitted, as long as we agree  
10:09:53AM 20 that there was no communication where Senator Borrelli leans  
21 over, mutes his microphone and says something to Senator  
22 Quezada, and certainly no appearance that Senator Quezada was  
23 upset by, you know, some remark that he's heard.

24 THE COURT: Well, okay. The only thing I want to  
10:10:09AM 25 resolve right now is whether or not there's any need to re-call

10:10:12AM 1 Mr. Quezada?

2 MR. LANGHOFER: So the only other thing I can consider  
3 here -- contemplate wanting to ask him is we have more -- as an  
4 offer of proof, Senator Quezada said he didn't know Quan  
10:10:29AM 5 Nguyen, the Vietnamese refugee who introduced -- who voted for  
6 the Challenged Laws in this case. It turns out he has at a  
7 minimum referred to the actions of Quan Nguyen as white  
8 supremacy.

9 THE COURT: I think you asked him about that.

10:10:49AM 10 MR. LANGHOFER: I asked whether he knew him, and he  
11 said he did not. But then he's got tweets saying, this is  
12 white supremacy, in regard to Quan Nguyen.

13 THE COURT: Did they serve at the same time in the  
14 same house?

10:11:04AM 15 MR. LANGHOFER: Different house, same time.

16 THE COURT: Different house.

17 MR. LANGHOFER: And then they've got these Twitter  
18 exchanges or Quan Nguyen posts something. And then Senator  
19 Quezada says, this is white supremacy.

10:11:14AM 20 We've got more tweets like that. I think we've gone  
21 down this road. I don't know if it's adding a lot of value to  
22 the Court, but that's the only other thing we would want to get  
23 from him on recross tomorrow.

24 MR. HERRERA: Your Honor, I think that that  
10:11:31AM 25 opportunity, if these were Twitter exchanges that happened



10:11:35AM 1 before this past week, then I think that is something that  
2 could have been asked last week.

3 THE COURT: I agree.

4 MR. HERRERA: And --

10:11:42AM 5 THE COURT: I agree. Mr. Langhofer, you asked him  
6 about Mr. Lee?

7 MR. LANGHOFER: Nguyen

8 THE COURT: Nguyen. I'm sorry. Mr. Nguyen. I  
9 thought you asked him the thing about white supremacy, but I  
10:11:56AM10 could be wrong.

11 MR. LANGHOFER: There were several of those. We  
12 didn't ask about this one.

13 THE COURT: But why didn't you ask him these questions  
14 last week?

10:12:06AM15 MR. LANGHOFER: Because -- if you would like, I can  
16 show you the disclosures we received about Mr. Quezada before  
17 he took the stand.

18 THE COURT: Oh, so you're saying 'cause you were  
19 surprised about the scope of his testimony?

10:12:19AM20 MR. LANGHOFER: Yes, Your Honor. Now -- and to that  
21 point, I received last night for the first time a draft motion  
22 to strike the portion of his testimony that was undisclosed in  
23 advance. You know, I --

24 THE COURT: I'm sorry, who's moving to strike?

10:12:36AM25 MR. LANGHOFER: We haven't filed it yet, but I expect

10:12:38AM 1 that we will, so I don't want there to be a suggestion that  
2 we've been sitting on this and doing nothing. Immediately we  
3 pulled the videos, ordered transcripts, started drafting a  
4 motion to strike based on disclosure issues.

10:12:51AM 5 If we -- Your Honor hasn't seen the motion yet, and I  
6 don't think you want us to sort of orally summarize it here.

7 THE COURT: That's correct.

8 MR. LANGHOFER: But the -- if he -- we don't know what  
9 the disposition of that motion will be. Vigorous  
10:13:05AM10 cross-examination on a surprise testimony at trial is not  
11 unusual.

12 THE COURT: So are you trying to call him back just to  
13 talk to him about these tweets that he sent?

14 MR. LANGHOFER: If the foundation authenticity issues  
10:13:27AM15 are resolved, it sounds like they are, that would be the only  
16 purpose for re-calling them.

17 THE COURT: Again, this doesn't say they're  
18 admissible, but if Mr. Langhofer has obtained the Twitter  
19 account that shows him tweeting about whoever this -- senator?

10:13:45AM20 MR. LANGHOFER: Yes, Your Honor.

21 THE COURT: Senator Nguyen?

22 MR. LANGHOFER: I'm sorry. I thought you were  
23 referring to Borrelli. Nguyen is a representative. I  
24 apologize.

10:13:53AM25 THE COURT: Oh, it's the other way around okay. Okay.

10:13:59AM 1 We don't need Quezada and we can argue about its admissibility.  
2 MR. HERRERA: About admissibility of the tweets, Your  
3 Honor?  
4 THE COURT: Yes.  
10:14:10AM 5 MR. HERRERA: I think we can sort that out.  
6 THE COURT: Good.  
7 MR. HERRERA: On the videos, I would just note for the  
8 matter of showing Senator Borrelli leaning over or not, I think  
9 as long as we're able to also review the videos and --  
10:14:25AM 10 THE COURT: Of course, I want you to review the videos  
11 and either agree or disagree. If you disagree, I will address  
12 that. If you agree, it's over.  
13 MR. HERRERA: Okay.  
14 THE COURT: As to what they show. Okay.  
10:14:38AM 15 MR. LANGHOFER: I think that's a resolution.  
16 THE COURT: All right. Excellent.  
17 MR. LANGHOFER: With that the defense calls Jesse  
18 Richman.  
19 THE CLERK: Stand here and raise your right hand.  
10:14:58AM 20 **JESSE RICHMAN, PH.D. - DEFENDANTS' WITNESS, SWORN**  
21 THE CLERK: Can you please state your name and spell  
22 last name for the record?  
23 THE WITNESS: Jesse Richman. Last name spelled  
24 R-I-C-H-M-A-N.  
10:15:34AM 25 THE COURT: You may proceed, Mr. Langhofer.

10:15:35AM 1 MR. LANGHOFER: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. LANGHOFER:

4 Q. Good morning, Mr. Richman. Please take a moment and  
10:15:43AM 5 introduce yourself to the Court.

6 A. My name is Jesse Richman. I am an associate professor of  
7 political science and international studies at Old Dominion  
8 University.

9 Q. And can you please tell us about your educational  
10:15:57AM 10 background, sir?

11 A. Yes. I completed a BPhil in history and political science  
12 at the University of Pittsburgh summa cum laude, and then I  
13 completed my master's and Ph.D. in political science at  
14 Carnegie Mellon University.

10:16:15AM 15 Q. When did you graduate from Carnegie Mellon with your Ph.D.?

16 A. I graduated in 2005.

17 Q. And what was your first job out of Carnegie Mellon?

18 A. I took a job as a visiting assistant professor at  
19 Vanderbilt University, and after one year at Vanderbilt, I  
10:16:34AM 20 moved on to Old Dominion.

21 Q. At Old Dominion, were you in a tenure track position when  
22 you joined faculty there?

23 A. Yes, I was in a tenure track position and received tenure  
24 in 2012.

10:16:46AM 25 Q. What's your current position?

10:16:48AM 1 A. I'm associate professor of political science and  
2 international studies.  
3 Q. What are your research interests there?  
4 A. My research interests are in American politics and research  
10:16:59AM 5 methodology and modeling and simulation. I have published 25  
6 papers. I study legislatures, elections, legislative  
7 elections, state politics, national politics, election rules,  
8 and variety of other topics.  
9 Q. You just mentioned 25 publications. Are those in  
10:17:28AM 10 peer-reviewed journals?  
11 A. Yes, those are all in peer-reviewed journals.  
12 Q. Have you published in the American Political Science  
13 Review?  
14 A. Yes, I have.  
10:17:36AM 15 Q. Why is that significant?  
16 A. The American Political Science Review is generally seen as  
17 top-ranked journal in the field of political science.  
18 Q. How about the Journal of Politics?  
19 A. Another top ranked journal, typically seen as the  
10:17:50AM 20 third-ranked journal in American politics. I've also published  
21 in that journal.  
22 Q. Have you published on election administration rules?  
23 A. Yes, I have.  
24 Q. Have you authored any books?  
10:18:02AM 25 A. I have authored two books.

10:18:04AM 1

Q. Co-authored?

2

A. Co-authored, yes.

3

Q. What courses do you teach?

4

A. I teach courses in American politics, including American politics, Congress, elections, public opinion, and American political thought.

10:18:14AM 5

6

7

I teach courses in research methods, statistics and

8

modeling simulation including research design, research

9

methods, quantitative methods and advanced statistical

10:18:35AM 10

11

techniques, and game theory. I teach courses at both the undergraduate and graduate level in that area.

12

Q. Do you teach Ph.D.-level courses in advance statistics?

13

A. Yes. The course in advanced statistics is a Ph.D. level course, and I teach that every year.

14

10:18:54AM 15

16

Q. Does that course include topics -- the use of large data sets?

17

A. It does.

18

Q. Does it include matching procedures when you are using

19

large data sets?

10:19:06AM 20

21

Q. Can you tell us about some of the research that you have supervised?

22

23

A. I have supervised the work of many students, undergraduate and graduate level. I have won awards for my research

24

10:19:24AM 25

mentoring at both the undergraduate and graduate level.

10:19:28AM 1 Students have completed projects in a wide range of areas,  
2 including projects on American politics but also projects  
3 applying research methods to a wide range of different problems  
4 around the world.

10:19:44AM 5 Q. When you are asked to serve on dissertation committees,  
6 what expertise are you customarily asked to provide as part of  
7 that service?

8 A. I am typically asked to provide expertise in research  
9 methods.

10:19:59AM 10 Q. What type of research methods?

11 A. So this would include statistical models and methods, also  
12 game theoretic modeling.

13 Q. Have you won any awards for your academic work?

14 A. Yes. So I have won awards including an American Political

10:20:18AM 15 Science Association Congressional Fellowship and a Fulbright  
16 award. I am currently on the Fulbright specialist roster and  
17 have completed an assignment on that roster as well.

18 Q. Dr. Richman, what have you been asked to do in this case?

19 A. I was asked to evaluate and assess two expert reports. The  
10:20:45AM 20 report of Michael McDonald and the report of Lorraine Minnite.

21 Q. And what process did you follow in undertaking this task?

22 A. I began by reading each report carefully and taking notes.

23 I then used the data sets which were used by Professor McDonald  
24 in his report to evaluate the reducibility of the analysis

10:21:13AM 25 which he had conducted, and I conducted a variety of other

10:21:18AM 1 analyses aimed at evaluating the robustness and accuracy of the  
2 claims and conclusions in those reports.

3 Q. You said data sets. What data sets are you talking about?

4 A. So Professor McDonald primarily examined data sets provided  
10:21:36AM 5 by the state of Arizona, both data from the Secretary of  
6 State's office voter file records, several types and data from  
7 the Department of Motor Vehicles.

8 Q. Did you consider the narrative portions of both Professor  
9 McDonald and Professor Minnite's reports?

10:21:59AM 10 A. Yes, I did.

11 Q. Did you prepare a report of your own in this case?

12 A. Yes, I did.

13 Q. Okay. I would like to talk to you about database matching  
14 procedures as the first of I think four topics we are going to  
10:22:09AM 15 cover today.

16 Have you given some thought to the strengths of  
17 Arizona's current practice of database matching to confirm  
18 citizenship?

19 A. I think the current practice is quite robust. It involves  
10:22:29AM 20 using multiple data sets to obtain proof of citizenship.

21 Q. Have you run any tests to determine -- to identify errors  
22 or inaccuracies in the ADOT data that's used as part of the  
23 HAVA check process?

24 A. Yes. So one of the data sets that is used under current  
10:22:50AM 25 practice is data from ADOT, and this data involves information,



10:22:56AM 1 among other things, on the citizenship status of individuals.

2 One of the files that Professor McDonald and I were  
3 provided with is a file which discusses the changes that have  
4 occurred in the citizenship status records held by ADOT.

10:23:22AM 5 Q. Did you evaluate that file for apparent errors?

6 A. Yes, I did.

7 Q. What did you find?

8 A. What I found was that there were 22 cases out of 40,000  
9 records in that file, and out of about 7 million overall

10:23:38AM 10 records in the ADOT database for which there was a change in  
11 status from a citizenship status code to a non-citizenship  
12 status code.

13 Q. And what was your -- do you have an opinion then about what  
14 that suggests about the reliability of the ADOT data?

10:23:59AM 15 A. It suggests to me that there are very few clear errors in  
16 the citizenship status measure in the ADOT data.

17 Q. We are going to get back to this potential staleness of the  
18 ADOT data in a bit. But have you thought about Arizona's  
19 current practice of using not just one database but multiple  
10:24:23AM 20 databases at the same time?

21 A. Yes. I think that using multiple databases is a clear  
22 strength of the current practice and that this will be improved  
23 further with additional databases.

24 Q. Have you thought specifically about the use of SAVE in  
10:24:43AM 25 addition to the ADOT database and whether that has an effect on

10:24:46AM 1 the reliability of the current process?

2 A. Certainly. One of the key issues with the ADOT data is  
3 that that data is only updated at most when someone interacts  
4 with ADOT. And so a significant portion of the time somebody  
10:25:02AM 5 who is, you know, interacted with ADOT several years ago may  
6 have had some change in their citizenship status and the ADOT  
7 data may be missing that change in status.

8 So this -- we could refer to this as staleness in the  
9 ADOT data. Sometimes ADOT is out of date. And so the SAVE

10:25:25AM10 data set is potentially very useful in addressing that  
11 limitation because SAVE data is updated continually by U.S.  
12 immigration authorities, so one possible pattern that one could  
13 see is someone receives a driver's license by the -- with the  
14 State of Arizona, they are not a citizen at that point, they  
10:25:47AM15 provide proof of legal presence, maybe their Green Card or more  
16 temporary status document, and then they are able to  
17 naturalize. They become a U.S. citizen.

18 The ADOT data set may not have updated yet to include  
19 that; however, the SAVE data set will typically have updated.

10:26:08AM20 The deposition testimony from the immigration authorities, it's  
21 typically a day or two -- federal working day or two for that  
22 update. So typically when ADOT is stale in the place where  
23 that matters, which is with someone who told ADOT they were not  
24 a citizen, the SAVE data set can back stop that and help assure  
10:26:32AM25 that that person gets a right to vote in all elections.

10:26:40AM 1 Q. Are you familiar with a data system named the National  
2 Association for Public Health Statistics and Information  
3 Systems?

4 A. Yes, I am.

10:26:51AM 5 Q. I would -- is it okay if we just talk about this as the  
6 "vital records database" going forward?

7 A. That sounds fine to me.

8 Q. Good. What is the vital records database?

9 A. So this has developed across time from collaboration  
10:27:05AM10 between the vital records administrators in different states  
11 and also U.S. territories, and it's a database that has matured  
12 significantly over time. That database, in collaboration with  
13 the Social Security Administration, is used by Social Security  
14 to verify for example when Social Security receives a birth  
10:27:28AM15 certificate.

16 THE COURT: Hold on a second. I thought you were  
17 going to tell me what it was first before you tell me --

18 THE WITNESS: I'm very sorry.

19 THE COURT: -- before you tell me who they talked to  
10:27:35AM20 about it. I mean, when I say "talk to" I mean the computers  
21 talk to each other.

22 THE WITNESS: Okay.

23 BY MR. LANGHOFER:

24 Q. I'll break this up with questions so that we are directed.

10:27:45AM25 A. Thanks.

10:27:46AM 1 Q. So the vital records database is not currently used in  
2 Arizona's voter registration process, correct?

3 A. That's correct.

4 Q. What information does the vital records database gather?

10:27:59AM 5 A. It gathers information on vital records. So births,  
6 deaths, marriages, divorces, some other information as well has  
7 been collected at various points by various states.

8 Q. Does it -- is the information collected uniform across all  
9 of the states? For example, if there's a particular data point  
10:28:20AM 10 from one state, is it necessarily there for all of the states?

11 A. It is not completely uniform. So, for example, some states  
12 have -- put into an electronic form their vital records going  
13 back further in time than other states. So some states it's  
14 1920, other states it's 1860-something and so forth, so there's  
10:28:45AM 15 some variability.

16 Q. The information that it contains on births, does that  
17 include date of birth?

18 A. Yes.

19 Q. Does it include birthplace?

10:28:56AM 20 A. Yes.

21 Q. Do you have an opinion --

22 THE COURT: Wait a second. Whose database is it? You  
23 said they collect information from state vital records, but who  
24 actually owns this database?

10:29:14AM 25 THE WITNESS: So it's a collaboration of the various

10:29:16AM 1 state organizations that collect that information to assist in  
2 sharing that information.

3 THE COURT: So the state organizations are the ones  
4 that contribute the money to keep the database maintained?

10:29:27AM 5 THE WITNESS: I'm not sure of the details of how it's  
6 funded. It's possible that some of the funding also comes from  
7 users of the database.

8 THE COURT: But it's not owned by some company that  
9 has entered into contracts with every state to get this  
10:29:43AM10 information.

11 THE WITNESS: My understanding is that it is a  
12 organization that involves collaboration between the various  
13 state organizations that collect the records.

14 BY MR. LANGHOFER:

10:29:57AM15 Q. Do you know whether it's for profit or nonprofit?

16 A. I don't know. I would assume it's nonprofit, but I don't  
17 know.

18 Q. Okay. Do you have a view on whether incorporating the  
19 vital records database into Arizona's voter registration

10:30:15AM20 process would increase the efficiency of the current  
21 citizenship verification system in Arizona?

22 A. I think it would improve the efficiency.

23 Q. In what ways might it be able to help if added?

24 A. So currently Arizona's process includes the Department of  
10:30:36AM25 Motor Vehicle's data, which is excellent data where that can be

10:30:41AM 1 obtained, or if somebody demonstrated to ADOT that they are a  
2 citizen, then ADOT can use that information to let the  
3 Secretary of State and the county recorders know that this  
4 person is a citizen.

10:30:57AM 5 However -- and then furthermore there's the SAVE  
6 database which is useful for people who have naturalized and  
7 become a citizen. The potential gap is somebody who is a U.S.  
8 citizen and doesn't have an ADOT credential. And the vital  
9 records can fill an important gap there.

10:31:22AM 10 Because if you were born in any of the U.S. states or  
11 territories, for the most part, with some exceptions, if your,  
12 you know, state has a 1920 end of the window, right, so  
13 somebody born -- one of the oldest people alive would maybe not  
14 be in that database, things like that. But for the most -- so  
10:31:46AM 15 you have to be cognizant of those limitations when analyzing  
16 that data.

17 In many instances this would allow the state to  
18 identify proof of citizenship for that person through a match  
19 with the vital records database.

10:32:07AM 20 Q. For about what percentage of Arizona voters does the ADOT  
21 data not provide an answer on the citizenship question?

22 A. It is about 250,000 people on the active voter roll for  
23 whom there isn't a match with the ADOT date that would provide  
24 DPOC.

10:32:30AM 25 Q. Okay. About 5 percent of active and inactive voters then?

10:32:35AM 1 A. That's right.

2 Q. If the vital records database were an alternative means for  
3 confirming citizenship, do you have an opinion about whether  
4 that would reduce the frequency with which voters are asked to  
10:32:51AM 5 mail in copies of their birth certificates, for example?

6 A. I think it would reduce by a very substantial margin the  
7 extent to which that happens. Especially given that the laws  
8 in question in this case will increase the degree to which  
9 people are providing information on their state of birth, that  
10:33:14AM 10 will facilitate matching. Even without that you might still be  
11 able to match, but that will facilitate accuracy of matching.

12 For many of those individuals it becomes a costless  
13 process as it is with ADOT, where you simply -- the state works  
14 in the background using databases to identify DPOC, and this  
10:33:34AM 15 eliminates any need for the individual to find or provide DPOC.

16 So it reduces costs for those registrants who aren't being  
17 captured already by the other databases in use.

18 Q. In your mind, would adding the vital records database to  
19 the citizenship checks in Arizona significantly increase the  
10:33:59AM 20 odds of a false positive on citizenship, essentially

21 identifying a non-citizen incorrectly as someone who was born  
22 in the United States?

23 A. I think it would have a minimal effect on false positive  
24 rate. It could happen because somebody could get incredibly  
10:34:18AM 25 lucky as a non-citizen, and if they are claiming that they were

10:34:24AM 1 born in a U.S. state, they happen to claim that they were born  
2 in a U.S. state on the same day with the same father or  
3 mother's name, if they filled in that field, as somebody else  
4 who is a U.S. citizen, same birthdate, that could happen. I  
10:34:45AM 5 think it's unlikely to be a substantial problem, however.

6 Q. Have you developed a view on weaknesses in the current  
7 database checking system used by Arizona?

8 THE COURT: Before we hear that answer, we'll take our  
9 morning break. We will reconvene at 10 minutes to 11:00.

10:35:05AM 10 Court is in recess.

11 (Recess taken at 10:35 a.m.; resumed at 10:50 a.m.)

12 THE COURT: You may continue, Mr. Langhofer.

13 MR. LANGHOFER: Thank you.

14 BY MR. LANGHOFER:

10:50:11AM 15 Q. Dr. Richman, before we leave vital records, I should ask  
16 you, do any other states currently use the vital records  
17 database for purposes of voter registration?

18 A. Yes. For example, the state of Missouri uses the vital  
19 records database, EVVE, which is the database produced by

10:50:32AM 20 NAPHSIS to establish voter identification.

21 Q. NAPHSIS again is the vital records database?

22 A. That's right.

23 Q. Has the Elections Systems Commission, U.S. Election Systems  
24 Commission given any guidance on the appropriateness of using  
10:50:47AM 25 the vital records database?



10:50:48AM 1 A. Yes. In fact it's one of the tools that they recommend  
2 that states adopt to improve their election practices.

3 Q. Have you considered whether there are any weaknesses in  
4 Arizona's current database checking procedures?

10:51:05AM 5 A. So related to what we were just talking about, one of the  
6 weaknesses is the lack of use of EVVE, the vital records  
7 database.

8 Q. Have you thought about whether the -- Arizona's use of the  
9 database checks only at the time of registration and not on an  
10:51:29AM 10 ongoing basis is a strength or a weakness?

11 A. That's another weakness of the current system. So, for  
12 example, let's say that somebody registers to vote, and at the  
13 time they register, ADOT is not able to provide DPOC. And so  
14 perhaps they end up getting put on the federal-only list.

10:51:57AM 15 At some point, however, they may have returned to ADOT  
16 and provided proof of legal presence, or they may have gone for  
17 the first time to ADOT and provided proof of legal presence.  
18 And so ADOT may now have evidence that they are a U.S. citizen  
19 and they should be on full voter list.

10:52:17AM 20 But under current practice, that's not going to be  
21 rechecked, and so they may stay on that list when the State in  
22 fact does know that they have DPOC and, you know, they should  
23 be, I would argue, on the full voter list as soon as possible.

24 Q. Have you and Professor McDonald looked at whether those  
10:52:38AM 25 sorts of voters exist? Currently registered federal-only but

10:52:41AM 1 have since registration provided DPOC to ADOT?

2 A. Yes. We both looked at that. My calculation is that there  
3 are currently 112 such voters on the federal-only list for whom  
4 ADOT now appears to have a record demonstrating that they are a  
10:53:00AM 5 citizen and nonetheless they are still in the fed-only list.

6 This law would, as those checks proceed, take those voters, I  
7 believe, off of the fed-only list and get them onto the full  
8 list where they belong.

9 Q. All right. I'd like to turn now to the second of four  
10:53:21AM 10 topics. And that's the even or uneven implementation of voter  
11 registration procedures across the counties. You have  
12 considered Professor McDonald's report on this issue?

13 A. Yes, I have.

14 Q. And let's start with his concerns about the number of  
10:53:42AM 15 individuals who appear on the suspended and canceled lists  
16 across the various counties.

17 MR. LANGHOFER: If possible, Elaine, can I have the  
18 laptop available as well.

19 BY MR. LANGHOFER:

10:53:58AM 20 Q. Here we go. I am showing you, sir -- yeah, it's doing that  
21 thing again.

22 Sir, you've previously seen exhibits -- what's  
23 previously been marked and admitted as Exhibit 334. I will  
24 describe it to you as a table of the counties in Arizona, and  
10:54:21AM 25 it indicated in one column the number of canceled, or for

10:54:26AM 1 Exhibit 335, suspended voters in each of those counties; do you  
2 recall this table?

3 A. I do.

4 Q. And Professor Richman argued that the table showed uneven  
10:54:36AM 5 implementation across the counties. Have you considered  
6 whether the data underlying those tables support the argument?

7 A. I think you may have misstated. You said Professor Richman  
8 argued. Could you restate the question?

9 Q. I'm sorry. I meant Professor McDonald. Thank you for the  
10:54:50AM 10 correction.

11 A. So Professor McDonald argued that there was uneven  
12 implementation. I noted several limitations of his argument.  
13 One of the limitations was that there are a variety of  
14 different cancelation codes and these overlapped with each  
10:55:07AM 15 other.

16 And ideally when one is constructing a coding system  
17 for a database, one should not have overlapping codes, but in  
18 this case they could very well overlap. There is a broader  
19 category of involuntary cancellation that could easily include  
10:55:22AM 20 cancellation because of lack of DPOC. It's -- these are nested  
21 inside each other, and so that could happen.

22 Q. So let's slow down and think about this in a little bit  
23 more detail. When a county cancels a voter, how do they -- are  
24 they required to enter a code indicating the reason for  
10:55:45AM 25 cancellation?

10:55:46AM 1 A. Yes, so they enter a code for reason of cancelation.

2 Q. About how many reasons are there?

3 A. There are about -- I can't remember exactly, about 39 I  
4 believe.

10:55:54AM 5 Q. And --

6 THE COURT: Are we talking here about the 13 counties  
7 that use the Secretary of State and that's where the 39 reasons  
8 are? I understand that Pima and Maricopa have their own  
9 database.

10:56:11AM 10 MR. LANGHOFER: That's a good question, Your Honor. I  
11 think this is best directed to the witness.

12 BY MR. LANGHOFER:

13 Q. Professor Richman, can you answer the Judge's questions?

14 A. I would be happy to. Yes, so those codes are counties with  
10:56:23AM 15 the Secretary of State. A further source of potential  
16 complication in the data is that the codes used by the counties  
17 that maintain their own databases may be distinct, and so  
18 again, focusing just on that code from the set of codes used by  
19 the counties that are on the Secretary of State's data system  
10:56:44AM 20 might further be problematic when looking at those counties.

21 Q. The Court has previously received evidence about how  
22 Professor McDonald was looking at people who were canceled for  
23 the invalid citizenship proof reason. Is there another code of  
24 the available codes that might cover someone who is canceled  
10:57:05AM 25 for lack of DPOC?

10:57:08AM 1 A. So there's another code for cancelation for citizenship  
2 status. There are also codes for voluntary cancelation, code  
3 for involuntary cancelation. Either one of those could apply.

4 Somebody might ask to be canceled. In some other  
10:57:26AM 5 states one of the main ways that non-citizens on the voter roll  
6 get detected is when those people realize that they  
7 accidentally got on the voter roll and asked to be canceled.  
8 So, you know, potentially those people could be entered in the  
9 code cancelation for citizenship or they could be a broader  
10:57:48AM 10 category of voluntary cancellation. It could go a variety of  
11 ways. So there again, they are overlapping codes.

12 Q. Were there any issues with -- you know, I think Your Honor  
13 has already received evidence on that. Let's cut that.

14 Professor McDonald has also testified that the county  
10:58:11AM 15 recorders have given answers that are at a minimum in tension  
16 with each other about their interpretation of the laws. Have  
17 you had a chance to review the county recorder deposition  
18 transcript in this case?

19 A. I have.

10:58:26AM 20 Q. It's my understanding you didn't review all of them, but do  
21 you remember how many you did have access to and reviewed?

22 A. I can't remember precisely, but I believe it was nearly all  
23 at least.

24 Q. Okay. What was -- what is your opinion about whether the  
10:58:42AM 25 conclusion that the answers from the county recorders -- excuse

10:58:45AM 1 me.

2 What is your opinion about whether the answers of the  
3 county recorders in those depositions support the conclusion  
4 that they're implementing the laws unevenly?

10:58:55AM 5 A. I think that that conclusion would be premature, given the  
6 transcript. They were presented with a set of very vague  
7 hypotheticals to which they were asked to reply in rapid  
8 succession.

9 And I think that a reasonable person approaching such  
10:59:11AM 10 vague hypotheticals could answer a variety of ways depending on  
11 how they specifically envision what the specific facts of a  
12 case would look like.

13 A reasonable person given specific facts could  
14 reasonably go variety of ways. The hypotheticals were so vague  
10:59:29AM 15 that I don't think much can be concluded from them except that  
16 if you ask a really vague question, you're likely to get a  
17 confused and perhaps confusing set of answers.

18 Q. When the witnesses were asked these questions, did the  
19 depositions recess to consult with counsel, for example?

10:59:48AM 20 A. I can't recall across all of them. I think in many cases  
21 there were objections that were issued, but I couldn't see  
22 necessarily on all of the deposition transcripts that there was  
23 a recess.

24 Q. Let's turn now to the third or fourth issues. That is the  
11:00:06AM 25 voters with -- registered voters who have F-type licenses. Are

11:00:12AM 1 you familiar with the term "F-type license"?  
2 A. By "F-type license" you're referring to people who have a  
3 record with ADOT indicating that they are not a citizen, at  
4 least on the basis of the data that was last provided to ADOT  
11:00:30AM 5 providing proof of authorized presence.  
6 Q. Professor McDonald testified that there are 6084 voters  
7 who -- in the ADOT records that apparently have F-type  
8 licenses. Did you attempt to replicate that number with your  
9 own analyses?  
11:00:47AM 10 A. Yes, I was able to replicate that number.  
11 Q. And did Professor McDonald analyze, when discussing these  
12 6084 voters, the sequence of voter registration and issuance of  
13 the ADOT license at issue?  
14 A. I thought that was somewhat puzzling because when he  
11:01:10AM 15 analyzed the federal-only voters, the suspends, and the citizen  
16 canceled voters, he did do further analysis, but in this case  
17 he did not.  
18 He simply asserted that this was evidence of the  
19 inaccuracies in the ADOT data such as staleness of the data.  
11:01:33AM 20 But he did not do the same kinds of analyses that he had  
21 performed for the other groups, which would allow for more  
22 assessment of whether in fact there was evidence of staleness  
23 or not in that data.  
24 Q. The Court is already familiar with the sequence of data  
11:01:49AM 25 productions in this case, so let's not rehash that.

11:01:52AM 1 But with the first ADOT production, did you attempt to  
2 assess the sequencing of voter registration and ADOT issuance  
3 state?

4 A. Yes. So in that production Professor McDonald and myself  
11:02:11AM 5 were provided with the issuance states of the ADOT credentials,  
6 and we also had in the voter file the registration dates for  
7 voters.

8 And so I compared those, in terms of whether somebody  
9 had registered to vote prior to contact providing -- or  
11:02:32AM 10 updating their records with ADOT or whether they had registered  
11 to vote after providing those records to ADOT.

12 The second category registration to vote after  
13 providing records to ADOT would be the one that would be  
14 consistent with potentially an argument that the ADOT data was  
11:02:53AM 15 stale.

16 Q. Assumed naturalization, for example, right?

17 A. Exactly. It could be that somebody received their driver's  
18 license and then they naturalized and then they registered to  
19 vote but their driver's license had not expired yet and they  
11:03:13AM 20 hadn't returned to provide any updated information to ADOT.

21 Q. Let's talk about the other category there, the people  
22 who -- were there people in the category of registering to vote  
23 before receiving an ADOT license that is an F-type license?

24 A. Yes, there were.

11:03:32AM 25 Q. Okay. Before we get to what that number is, can you



11:03:37AM 1 explain the ambiguities that existed in the first data set  
2 produced to you by ADOT?

3 A. Certainly. So there are a variety of ways in which one can  
4 get an issuance number, and my understanding is that there are  
11:03:52AM 5 basically four of them. It could be that it's a duplicate  
6 credential. It could be that it is a replacement, or a  
7 renewal, or it could be an original credential.

8 Furthermore, there's a second category which is, is  
9 this a real ID or a non-real ID variable? And that's crucial  
11:04:13AM 10 in terms of thinking about the duplicate credentials. Because  
11 the testimony from ADOT was that for the duplicate credentials,  
12 if someone had a real ID, they would be asked to provide proof  
13 of authorized presence when they got the duplicate credential.

14 However, if it was not a real ID, then the person  
11:04:31AM 15 receiving a duplicate credential might not be required to  
16 provide that evidence of authorized presence. So basically  
17 that was the one category in which someone might have had a new  
18 issuance number, but that issuance number might not reflect  
19 provision of proof of authorized presence to ADOT at the time  
11:04:53AM 20 that they applied for that issuance.

21 Q. Did the first data production by ADOT allow you to see the  
22 type of issuance and the type of ID issued?

23 A. The first production did not have the information about the  
24 type of issuance, and it did not have information about whether  
11:05:14AM 25 the individual was receiving a real ID credential or not. So

11:05:18AM 1 that was an open question. I flagged that in my analysis as an  
2 issue that I did not have the data at that point to resolve.

3 Q. You said you flagged it in your analysis. Do you mean in  
4 your initial report?

11:05:32AM 5 A. In my initial report I discuss that issue.

6 Q. Okay. After you issued your initial report, did you  
7 receive a supplemental production from ADOT?

8 A. Yes. I did receive a supplemental production from ADOT,  
9 and I immediately worked on evaluating that issue. So I was  
11:05:49AM 10 able to, with the supplemental production, identify whether it  
11 was a real ID credential or not, and identify the type of  
12 issuance.

13 And so then I could create a table that laid out the  
14 various categories of whether somebody had a duplicate,  
11:06:05AM 15 non-real ID or something else, and that allows us to adjudicate  
16 whether when they got a new credential issued, ADOT would have  
17 required them to provide proof of authorized presence or not.

18 Q. Did you supplement your initial report after you received  
19 that supplement from ADOT?

11:06:27AM 20 A. Yes, I did.

21 Q. In preparing your supplemental report, you changed  
22 something about your calculations regarding dates. Can you  
23 please explain that?

24 A. Yes. So initially I had done the calculations involving  
11:06:42AM 25 dates in Excel. For the supplemental report I moved to

11:06:46AM 1 calculating everything in Stata, which is a statistical  
2 analysis package, the leading commercial statistical analysis  
3 program used in the field of political science.

4 And when I did that, I realized that there was an  
11:07:04AM 5 ambiguity in the way that I had treated individuals who had a  
6 credential issuance on the same day that they had registered to  
7 vote. I hadn't looked at those individuals, and, you know, I  
8 had greater than or less than, but I realized when I did the  
9 further coding in Stata that there were in fact individuals in  
11:07:29AM 10 that category as well, so then I needed to put them in one or  
11 another of the categories of the analysis.

12 Q. All right. Did you prepare a table that summarized your  
13 findings of the voters that fit into these categories, you  
14 know, receiving driver's license issued with proof of lawful  
11:07:54AM 15 presence before and after their voter registration date?

16 A. Yes, I did.

17 Q. And does that table compare the type of voter registration  
18 for each of those individuals, and by that I mean active,  
19 inactive, federal-only, et cetera?

11:08:12AM 20 A. Yes, it does.

21 MR. LANGHOFER: Elaine, we are going to try this  
22 overhead one more time, please.

23 THE CLERK: It is still showing no signal. Did you  
24 unplug and plug back in?

11:08:28AM 25 MR. LANGHOFER: Let's give that a shot. There is

11:08:29AM 1 another way of doing this. The old-fashioned way.

2 THE COURT: That used to be state of the art.

3 MR. LANGHOFER: I actually prefer it, but I don't know  
4 that anyone else does.

11:08:48AM 5 BY MR. LANGHOFER:

6 Q. From iPad through ELMO I am showing you, sir, a table that  
7 appears as Table 2.5 in your supplemental report. Is this the  
8 table you were just describing you prepared?

9 A. Yes, it is.

11:09:03AM 10 Q. Let's start with the center column that has a 6084 number  
11 at the top. Is this the same number that you and Professor  
12 McDonald agreed on?

13 A. Yes, it is.

14 THE COURT: So basically that's all of the F-type  
11:09:18AM 15 licenses or IDs?

16 THE WITNESS: So the central column is all of the  
17 people who we could match between the voter files, and there  
18 are various different voter files you can see listed going down  
19 the different rows, who had an F-type license in the ADOT  
11:09:40AM 20 database. So we matched the two databases, and these are the  
21 people with an F-type license.

22 THE COURT: Okay. I'm still confused. Are these  
23 people with F-type licenses who are registered to vote?

24 THE WITNESS: That would be in the first row, so  
11:09:56AM 25 active voter files. These are F-type licenses and registered

11:10:00AM 1

to vote.

2

3

4

THE COURT: So there's many, many more F-type licenses than 6084, it's just there's only 6084 that show F and they are on the voter registration list?

11:10:15AM 5

6

THE WITNESS: That's right. They are about 330,000 or so people with F-type licenses.

7

BY MR. LANGHOFER:

8

9

Q. And let's clarify that. 6084 is not everyone with an F-type license who's registered to vote, correct, because there are some additional rows in this table?

11:10:30AM 10

11

12

13

14

A. That's right. So this is people -- the first row is people who are on the active voter file non-federal only. Then there are also some individuals who are on the federal-only list who have an F-type license. So that would be the column -- the row here with 65 indicated in it.

11:10:51AM 15

16

17

18

19

There are also people on the canceled and suspended list who have F-type licenses. That's the 77 for canceled and 253 for suspended. Then there's finally another canceled category of canceled because on a jury survey somebody said they were not a citizen, and there's one person who falls into that category also.

11:11:15AM 20

21

22

23

24

Q. All right, Professor, let's talk a bit about the first column. Is the first column a subset of the second column?

A. Yes, it is.

11:11:32AM 25

Q. Okay. This first number 1,779, what does that represent?

11:11:37AM 1 A. That represents the result of the analysis I was able to do  
2 examining the timing of the issuance of the ADOT credential and  
3 the voter registration. So the people in the 1779 cell are  
4 individuals who registered to vote and either on that day or  
11:12:03AM 5 after that day they had a credential issued by ADOT based upon  
6 ADOT receiving proof of authorized presence that indicated they  
7 were not a citizen.

8 Q. This number --

9 THE COURT: Let me just ask if your understanding is  
11:12:24AM 10 the same as mine. That if someone registered to vote at the  
11 same time that ADOT issued them a driver's license or a state  
12 ID, it's in all likelihood because they registered to vote at  
13 ADOT at that very time.

14 THE WITNESS: I have no way to demonstrate that. The  
11:12:51AM 15 state election laws require that the place of registration be  
16 kept confidential, and that was not part of the files I  
17 received. So I don't know.

18 It seems like a logical deduction, but it's possible  
19 that someone may have gone from office to office. Maybe they  
11:13:12AM 20 went to the Department of Motor Vehicles and dealt with the  
21 driver's license and subsequently they went to a different  
22 office and registered to vote. There's no way to conclusively  
23 demonstrate that given the confidentiality issues in state law  
24 around --

11:13:28AM 25 THE COURT: But do you understand that ADOT asks

11:13:31AM 1

people --

2

THE WITNESS: Yes, of course.

3

THE COURT: -- would you like to register to vote

4

today with your new driver's license -- now that you are

11:13:37AM 5

getting a driver's license?

6

THE WITNESS: It's possible that these happened at the

7

same time.

8

THE COURT: You use "possible"; I use "likely."

9

THE WITNESS: It seems -- I would agree. It's quite

11:13:46AM 10

likely.

11

BY MR. LANGHOFER:

12

Q. Let's focus on quantifying that. How many of the people

13

out of the 1779 have registered and received an F-type license

14

on the same day?

11:13:58AM 15

A. My memory is it's about 400.

16

MR. LANGHOFER: And, Your Honor, I'll note on the

17

record I believe Professor McDonald said he thought it was 450,

18

just previous testimony.

19

BY MR. LANGHOFER:

11:14:09AM 20

Q. Of these 1779, how many received driver's licenses before

21

-- or registered to vote before 2005?

22

A. There are about 100 of those.

23

Q. Okay. I understand that this number changed from your

24

first report to your supplemental report. What changed and

11:14:31AM 25

why?

11:14:32AM 1 A. So as I discussed previously, in the first report I  
2 couldn't rule out the possibility that these were duplicate  
3 issuances for non-real ID. So in the second report I got  
4 better data that allowed me to deal with that issue. And so  
11:14:50AM 5 I'm excluding from this number anybody who had a duplicate  
6 issuance for a non-real ID. It's possible of course that some  
7 of those people may have had multiple interactions with ADOT  
8 after registering to vote, so it could -- there are further  
9 possibilities that further data might allow one to adjudicate.  
11:15:11AM 10 I received that data later, but I believe that that's been  
11 excluded, so I can't talk about that.  
12 Q. You are not offering the opinion that these 1,779 votes --  
13 that this is proof that these individuals are not citizens, are  
14 you?  
11:15:31AM 15 A. No, not at all, and there are several reasons to be  
16 cautious about that conclusion. I think that's a likely  
17 conclusion about many of these, but let's keep in mind first,  
18 both of these interactions may have happened years ago, and so  
19 these people may have naturalized at this point, even if  
11:15:51AM 20 perhaps when they registered to vote they were not a citizen,  
21 they very well might be a citizen now.  
22 Second, it's possible that there's a matching error  
23 that is leading us to think that the person who told ADOT they  
24 are not a citizen is the same person who registered to vote,  
11:16:12AM 25 but perhaps in some cases that's not what happened.



11:16:16AM 1 Q. When you say "matching error," what do you mean by that?

2 A. Well, so these databases are being matched on the driver's  
3 license identification number. It's possible that someone may  
4 have provided the wrong driver's license identification number  
11:16:33AM 5 when they registered to vote, for instance, and so that could  
6 have accidentally gotten matched then with a different record  
7 than they intended to match with.

8 Q. What about data entry errors? Is that a possible  
9 explanation?

11:16:47AM 10 A. Yes, that's another possible explanation. There could be  
11 data entry.

12 Q. If you're not testifying that this is proof of  
13 non-citizenship, what is your view of the significance of this  
14 number?

11:16:56AM 15 A. I think this number speaks to the wisdom of following up  
16 with these people. It's quite possible that these are simply  
17 data entry errors, but it's also possible that in a significant  
18 number of cases these are people who in fact told ADOT they  
19 were not a citizen on the day that they registered to vote or  
11:17:18AM 20 after the day they registered on vote.

21 And in that case, that's an action which is contrary  
22 to the Arizona Constitution and to federal law, and it would be  
23 good to remove those people from the voter rolls. It could  
24 also be helpful for them potentially because voting while a  
11:17:42AM 25 non-citizen can be an issue in naturalization. So getting --

11:17:48AM 1 if they are non-citizens, getting then off the voter rolls as  
2 soon as possible would probably be in their interest as well.

3 Q. All right, Your Honor, we would offer into evidence  
4 Exhibit 974, this table on the screen currently.

11:18:05AM 5 THE COURT: Is there any objection?

6 MR. FREEDMAN: Your Honor, I believe --

7 THE COURT: Would you speak into a microphone if you  
8 are going to object?

9 MR. FREEDMAN: Sorry, ma'am. I believe, just for sake  
11:18:14AM 10 of clarity of the record, it's been marked as a different  
11 exhibit, and I'm looking for the number for you. But subject  
12 to the constraints that this is coming up to challenge, we have  
13 no objection to it coming in.

14 THE COURT: I have no idea what you are talking about.

11:18:29AM 15 MR. FREEDMAN: So I'm --

16 THE COURT: My question was, is there any objection?

17 MR. FREEDMAN: Subject to the same conditions that  
18 Mr. Langhofer consented to Mr. McDonald's tables coming in,  
19 that we can challenge the validity of the numbers, no  
11:18:43AM 20 objection.

21 MR. LANGHOFER: I think he wants to cross-examine on  
22 it, Your Honor.

23 THE COURT: I still have no idea what he's talking  
24 about, but I heard the "no objection." So 974 is admitted.

11:18:53AM 25 (Exhibit Number 974 is admitted.)

11:18:53AM 1 MR. LANGHOFER: And we certainly do expect  
2 cross-examination, so -- okay.

3 BY MR. LANGHOFER:

4 Q. Let's talk about now our fourth and final topic. That's  
11:19:12AM 5 voter confidence.

6 Have you formed an opinion about whether the  
7 Challenged Laws may have an effect on voter confidence in  
8 Arizona?

9 A. I have.

11:19:26AM 10 Q. What is your opinion about the effect the law may have on  
11 the confidence of people who are concerned about  
12 disenfranchisement in this state?

13 A. I think that these laws should increase confidence. As we  
14 discussed a little bit ago, with the vital records data coming  
11:19:45AM 15 now from across the country being used to establish DPOC, this  
16 should reduce substantially the extent to which the state is  
17 not able to automatically identify DPOC for people who are  
18 registering to vote.

19 THE COURT: Are you aware that there's been evidence  
11:20:05AM 20 in this trial that the people that are supposed to do this  
21 check with the vital records don't have any access to it?

22 THE WITNESS: I am.

23 THE COURT: So how can the comparison increase voter  
24 confidence if they don't have access? Are you assuming they  
11:20:23AM 25 are going to get access?

11:20:25AM 1 THE WITNESS: I would assume they would get access.  
2 The NAPHSIS website lists election processes as one of the uses  
3 of the data. There are other states that are using this data  
4 for election processes. My understanding is it's not being  
11:20:42AM 5 used currently because the laws in question are being litigated  
6 and that the state should be able to get access because other  
7 states do have access for use on voter file issues.

8 THE COURT: So you don't know why the state doesn't  
9 have access?

11:21:04AM 10 THE WITNESS: I do not. My assumption is that that's  
11 partly because the access here for use with voter files is part  
12 of laws that are currently being litigated, and my  
13 understanding is the state has not implemented those laws  
14 because of this litigation.

11:21:22AM 15 BY MR. LANGHOFER:

16 Q. Do you have a view on -- assuming -- well, do you -- do you  
17 have a view on whether the law may affect the confidence of  
18 people who are currently on the federal-only voter list?

19 A. I think that it should improve their ability to get off of  
11:21:44AM 20 the federal-only list. As we've discussed, there are  
21 additional databases being brought to bear, and this evaluation  
22 happens on a rolling basis after someone has registered to vote  
23 and been put on the federal-only list.

24 So we discussed there were 112 people who have a ADOT  
11:22:06AM 25 match indicating they are a citizen. Those people will

11:22:09AM 1 hopefully very quickly get into the full active voter list  
2 where it would appear they belong. And I think that's a good  
3 thing.

4 Furthermore, as the vital records data comes in, that  
11:22:24AM 5 should likely bring many additional people who are currently on  
6 the federal-only list into full participation.

7 I think it's important that this should require no  
8 effort on their part. They don't have to re-register to vote  
9 or take some other action to get off the federal-only list.

11:22:40AM 10 This is going to happen automatically through these periodic  
11 checks, and so that should reduce the number of people who are  
12 restricted in terms of the range of elections they can take  
13 part in.

14 Q. Finally, do you have a view on how this law, if  
11:22:56AM 15 implemented, might affect the confidence of people who are  
16 concerned about non-citizen voting in Arizona?

17 A. I think it should address many of those concerns. The  
18 state is deploying more databases, more checking. It should  
19 make it harder for people to engage in the kind of heated  
11:23:19AM 20 propaganda shtick, political rhetoric that we saw as part of  
21 the great -- the big lie over the last few years by reducing  
22 the number of people on the federal-only list, which has often  
23 been a lightning rod for criticism, and also by making clear  
24 for anybody who wants to pay attention, that the State is  
11:23:40AM 25 making an extensive effort to identify the citizenship status

11:23:44AM 1 of people on voter lists.

2 THE COURT: You just talked about people who might be  
3 paying attention. I think one of the issues with expressing  
4 that this will improve voter confidence is that there --

11:24:02AM 5 doesn't that have an assumption in it that somehow the citizens  
6 of Arizona will know about this, and there's nothing in the law  
7 that says that it's got to be publicized in some way to  
8 increase voter confidence.

9 You know, generally speaking, I would think that laws  
11:24:22AM 10 like this would not be the type that the average citizen of  
11 Arizona would even know about. They go to the polls. They  
12 vote. They have been doing that for years. They already gave  
13 their documented proof of citizenship. How do they know the  
14 rules have been tightened up?

11:24:42AM 15 THE WITNESS: I think that's a fair point. At the  
16 same time, as I just mentioned, one of the aspects that was  
17 deployed for propaganda purposes in the last few years in  
18 Arizona were the number of people on the federal-only list.

19 As that shrinks because of vital records and using the  
11:25:00AM 20 ADOT database, that diminishes the capacity to use that list as  
21 a kind of propaganda point by people.

22 And furthermore, although surely not everybody will be  
23 aware, it gives another point of argument for those trying to  
24 disabuse people who hold unrealistic views about the level of  
11:25:24AM 25 of say, non-citizen registration and voting in the state of

11:25:27AM 1 Arizona of those views. Look, the State is really working hard  
2 on this issue.

3           Conversely, I fear that if these laws are struck down  
4 in their entirety, that's bad for voter confidence because it  
11:25:45AM 5 means that those who are looking for propaganda points to score  
6 could say, look, we tried to protect you from these problems  
7 and we weren't able to, so the problems are still, you know,  
8 looming out there in some scary, huge level that, you know, is  
9 completely unrealistic. But, you know, we have seen those  
11:26:10AM 10 kinds of claims unfortunately here in recent years.

11 Q. Professor, just a couple of clean-up points. You published  
12 an article in 2014 concerning non-citizen voting, correct?

13 A. That's right.

14 Q. And you presented testimony in the *Fish versus Kobach* case,  
11:26:25AM 15 right?

16 A. Yes, I did.

17 Q. The methodology you used in *Fish versus Kobach* was based on  
18 the article you published in 2014?

19 A. Yes.

11:26:35AM 20 Q. Is any of the data that you used in preparing your opinions  
21 in this case drawn from your 2014 article or the *Fish* case?

22 A. None of the data that we've talked about so far is drawn  
23 from either of those.

24 Q. What about the calculation methods that you used -- that  
11:26:53AM 25 you have presented in this case? Are any of those methods

11:26:56AM 1 drawn from your 2014 article or the *Fish versus Kobach* case?

2 A. No, none of them are.

3 MR. LANGHOFER: No more questions on direct, Your

4 Honor. Thank you.

11:27:03AM 5 THE COURT: Thank you. Cross-examination.

6 MR. FREEDMAN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. FREEDMAN:

9 Q. John Freedman for the Poder plaintiffs.

11:27:19AM 10 So let's start with databases. As I understood your  
11 testimony when you started about 10:20 this morning, your view  
12 is that Arizona's practice of using multiple databases will be  
13 improved by adding additional databases, right?

14 A. That is my view.

11:27:37AM 15 THE COURT: Can I just amend your question to say "the  
16 proposal to use," or "the law that dictates using it," which  
17 has not gone into effect," as opposed to -- the way your  
18 question was worded, it sounded like it was a current practice.

19 MR. FREEDMAN: Your Honor, you can amend my questions  
11:27:54AM 20 any time you want.

21 THE COURT: Thank you.

22 THE WITNESS: Should I answer again?

23 BY MR. FREEDMAN:

24 Q. Yes, please.

11:28:00AM 25 A. Okay. I would agree, that is my testimony.



11:28:05AM 1 Q. And is it fair to say that you recognize that each of the  
2 databases we're talking about, the four that are in the law,  
3 specified law, three of which you talked about today, each of  
4 them has, I think the word you used was, a "weakness."

11:28:23AM 5 A. All databases have limitations.

6 Q. That's probably a better word. That's the one you actually  
7 used in your report.

8 Let me just walk through the four databases and we'll  
9 spend a little bit of time on them. I want to start with the

11:28:38AM10 Social Security Administration database, which you did not  
11 testify about in your direct, correct?

12 A. That's correct.

13 Q. You recognize the Social Security Administration database  
14 does not provide information on citizenship?

11:28:52AM15 A. That's right, but it's useful for establishing identity.

16 Q. Okay. I want to spend some time now on the NAPHSIS  
17 database which you spent actually probably most of your time  
18 earlier this morning talking about. This is the National  
19 Association for Public Health Statistics and Information  
11:29:12AM20 Systems electronic verification of vital events.

21 And I want to just recap with Judge Bolton's question  
22 at 11:20. You're aware that there's been testimony in this  
23 case that the county recorders don't have access to this?

24 A. Yes.

11:29:26AM25 Q. And you are aware that there's been testimony actually at

11:29:28AM 1 this trial that the one county recorder who has testified live  
2 had no idea what this database was?

3 A. I am not aware of what testimony has happened in this  
4 trial. I arrived by air yesterday afternoon.

11:29:44AM 5 Q. So I have a couple of questions about your testimony. You  
6 mentioned, notwithstanding the fact that county recorders don't  
7 currently have access, that other states have used NAPHSIS,  
8 right?

9 A. Yes.

11:30:00AM 10 Q. Where is that disclosed in your report?

11 A. That is not disclosed in my report, but I do discuss the  
12 usefulness of the database.

13 Q. Just so we're clear -- and I don't have a lot more  
14 questions about NAPHSIS. NAPHSIS can't be used to confirm the  
11:30:22AM 15 citizenship status for people born outside of the United

16 States, right?

17 A. Excuse me, could you please restate the question?

18 Q. I can repeat the question. Did you not understand it or  
19 did you --

11:30:32AM 20 A. Well, I would like you to clarify what you mean by "born  
21 outside of the United States."

22 Q. Sure. For people -- you would agree for people born -- not  
23 born in the United States, NAPHSIS is not going to be helpful  
24 in terms of determining their citizenship?

11:30:49AM 25 A. What do you mean by "United States"? Let me -- I don't

11:30:55AM 1 mean to be tendentious. It's merely that NAPHSIS includes data  
2 from various U.S. territories, and so are you including those  
3 or not? If you consider people from the U.S. territories as  
4 having been born in the United States, then I would agree. On  
11:31:12AM 5 the other hand, if you don't, then I would disagree.

6 Q. Let me see if I can refresh your recollection. At your  
7 deposition --

8 MR. FREEDMAN: Stephen, can you call up Professor  
9 Richman's deposition, page 60, lines 7 through 16?

11:31:26AM 10 BY MR. FREEDMAN:

11 Q. And you see that I asked you the question: Is there a  
12 group of individuals for which NAPHSIS is less likely to be  
13 able to provide information about citizenship?

14 And your answer was: Well, as I just said, it's going  
11:31:38AM 15 to help with providing information about people born in the  
16 United States. For people not born in the United States, it's  
17 not going to be as helpful in that instance.

18 A. Exactly. And so except in these edge cases of someone born  
19 in one of the U.S. territories that is part of this database,  
11:31:54AM 20 it's not going to be particularly useful, and so that's one of  
21 the key limitations of the data set.

22 As I talked about earlier, that's complemented by the  
23 limitations of the SAVE data set. So when put them together,  
24 then you have a much stronger capacity.

11:32:13AM 25 Q. I'll get to the SAVE database.

11:32:15AM 1 A. Okay.

2 Q. One final question on NAPHSIS. Are you aware of any

3 national unique identifier that allows somebody in the United

4 States to -- somebody in one state to identify people in

11:32:27AM 5 another state that NAPHSIS uses?

6 A. I'm sorry, could you rephrase the question?

7 Q. Yeah. I mean, we'll talk about -- with some of the other

8 databases their unique identifiers identified. For SAVE it's

9 what's called the A number or the alien registration number.

11:32:43AM 10 Are you aware of NAPHSIS having a similar national unique

11 identifier?

12 A. I am not aware that it has a national unique identifier. I

13 believe the identification is typically based on various

14 aspects of the vital records. So Social Security

11:32:59AM 15 Administration, for example, uses NAPHSIS to verify people's

16 statements about their birth certificates. And, you know,

17 they're looking at matches on names and dates of birth and so

18 forth in part.

19 Q. Let's turn to SAVE, the Systematic Alien Verification for

11:33:18AM 20 Entitlement system. You understand that's run by the U.S.

21 Citizenship and Immigration Services, USCIS?

22 A. I believe it is.

23 Q. The SAVE system -- you would agree, the SAVE system has

24 imperfect coverage for people born in the United States, right?

11:33:34AM 25 A. Yes, very, very limited. There are few edge cases where

11:33:38AM 1 somebody might be included because they sponsored someone for  
2 migration into the U.S. or things like that, but typically they  
3 are not included.

4 Q. And in order to -- you are aware that in order to -- I  
11:33:49AM 5 alluded to this earlier. In order to query the SAVE system, a  
6 user needs the subject's A number, the alien registration  
7 number, right?

8 A. I am not sure of the details in terms of ability to search  
9 more specifically, but typically, yes, I believe you need the A  
11:34:07AM 10 number.

11 Q. Is the A number maintained in the Arizona voter file?

12 A. I don't believe so, but the State may well have that in  
13 other files.

14 Q. If an election official, county recorder, doesn't have a  
11:34:25AM 15 registrant's A number, how is SAVE going to help them verify  
16 the citizenship?

17 A. I think that is an important limitation which can be  
18 addressed by possession of the A number by other state agencies  
19 potentially.

11:34:43AM 20 Q. Okay.

21 THE COURT: Do you know if other state agencies  
22 require the A number?

23 THE WITNESS: So the system is used extensively by  
24 ADOT. And so everybody who registers -- who is issued a

11:35:00AM 25 credential by ADOT, with the exception we talked about in terms

11:35:03AM 1 of duplicate credentials, and tells ADOT that they're not a  
2 citizen or -- they're going to get run through the SAVE system  
3 by ADOT and the credential doesn't issue until ADOT receives  
4 confirmation about their status through the SAVE system. So  
11:35:23AM 5 ADOT is using that number.

6 THE COURT: So your understanding is that when ADOT  
7 requires proof of lawful presence, if it is a non-citizen, they  
8 require the A number and then run the A number through SAVE.

9 THE WITNESS: The testimony in the deposition by  
11:35:40AM 10 Mr. Jorgensen for ADOT was quite clear about that, that they  
11 run that check each time.

12 MR. FREEDMAN: You are the fact finder, so I was  
13 waiting.

14 May I proceed?

11:36:20AM 15 THE COURT: Yes, please.

16 BY MR. FREEDMAN:

17 Q. Professor Richman, you are aware that Arizona's Memorandum  
18 of Agreement with USCIS does not allow use of the SAVE system  
19 to check the status of persons who have already been registered  
11:36:36AM 20 to vote, correct?

21 A. I have been told that. I think it was in one of the  
22 reports I read.

23 Q. Now, when a county recorder uses the SAVE system, USCIS may  
24 need a county recorder to follow-up and verify information,  
11:36:59AM 25 right?

11:37:02AM 1 A. I'm sorry. Could you restate the question?  
2 Q. Sure. I'm asking a question about the county recorder  
3 process for checking SAVE. And my question is whether you're  
4 aware that sometimes when the county recorder puts in a request  
11:37:17AM 5 to SAVE, USCIS comes back and makes a request back to the  
6 county recorder asking them to verify certain information?  
7 A. I believe that happens. In fact, I believe every time a  
8 SAVE request is run, SAVE provides an option for the user, if  
9 they received a result that was maybe unexpected or not  
11:37:39AM 10 consistent with what they thought, to request further follow-up  
11 by SAVE in a manual process.  
12 THE COURT: So I want to go back to what you and  
13 Mr. Freedman were just talking about. ADOT has an agreement  
14 with USCIS that they can run an alien number through the SAVE  
11:38:05AM 15 system to verify lawful presence when they issue a driver's  
16 license -- an F-type driver's license or state ID?  
17 A. That's right. My understanding is that every time they are  
18 asking for -- they ask someone for proof of authorized  
19 presence, they run that evidence that they receive if this  
11:38:24AM 20 person is providing information that would be relevant for  
21 SAVE, such as, you know, a Green Card, legal permanent resident  
22 and so forth. They're running that through the SAVE system to  
23 verify the information.  
24 THE COURT: But I think you just agreed with  
11:38:40AM 25 Mr. Freedman that the Memorandum of Understanding -- or

11:38:46AM 1 Agreement with SAVE -- with USCIS does not allow county  
2 recorders through ADOT to run people through the SAVE system  
3 for purposes of confirming citizenship for voter registration.

4 THE WITNESS: I think the difference is you added  
11:39:10AM 5 "through ADOT." I think the testimony -- my impression is that  
6 the limitation is the agreement between the Secretary of  
7 State's office and USCIS. So there are different agencies  
8 which have Memorandums of Understanding.

9 THE COURT: Let's go back to the Secretary of State.  
11:39:33AM 10 The Secretary of State's office has a Memorandum of  
11 Understanding with USCIS that prohibits it from periodically  
12 running registered voters through the SAVE system?

13 THE WITNESS: I do not know. That was in I think one  
14 of the expert reports that was provided to me. I did not get  
11:40:00AM 15 access to the specific Memorandum of Understanding so I can't  
16 speak to it, other than to say that one of the experts from the  
17 plaintiffs' side asserted that that was the case. I don't have  
18 specific information that would allow me to verify that.

19 THE COURT: But if it's true that the Secretary of  
11:40:20AM 20 State can't use the SAVE system periodically, and that ADOT can  
21 only use it at the time of issuance of a F-type license to  
22 verify legal presence, then the periodic database check that's  
23 in the law for SAVE can't be executed?

24 THE WITNESS: I think this is in the same category of  
11:40:51AM 25 issue as what we were talking about a little bit ago with the



11:40:55AM 1 vital records database. Currently the State isn't doing that  
2 and their agreement doesn't contemplate doing that, but  
3 Memorandums of Understanding are not set in stone. I would  
4 expect that that could potentially be renegotiated.

11:41:09AM 5 THE COURT: So your assumption that there will be  
6 these multiple database checks, specifically with SAVE and with  
7 the vital records, assumes that the Secretary of State and/or  
8 the county recorders are going to renegotiate an existing  
9 agreement with SAVE or enter into an agreement with the  
11:41:36AM 10 organization that maintains the vital records so that they can  
11 do that?

12 THE WITNESS: Essentially that they will implement the  
13 law. If they don't implement the law, then my discussion of  
14 what the advantages of implementing the law would be  
11:41:52AM 15 potentially doesn't apply.

16 MR. FREEDMAN: Thank you.

17 BY MR. FREEDMAN:

18 Q. Just a few more questions about SAVE. You are aware that  
19 the information in SAVE about citizenship status is not always  
11:42:07AM 20 instant and there could be a delay or lag time, right?

21 A. Yes. I looked over the transcript from the deposition for  
22 USCIS and there's discussion that sometimes there's a day  
23 delay. The people in the deposition seemed to think that it  
24 was usually very quick, one federal working day, that sort of  
11:42:28AM 25 thing, but potentially that could be an issue in some

11:42:34AM 1 instances.

2 I think this is why it is particularly important to go

3 back, because it's possible someone could fall through the

4 cracks. I naturalized and registered to vote and my

11:42:47AM 5 information is run immediately and SAVE hasn't updated yet, and

6 I get put on the federal-only list. And then the next day SAVE

7 is updated. If there's a monthly check, then the next month I

8 am going to be off the list.

9 Q. My question --

11:43:07AM 10 THE COURT: Let's --

11 THE WITNESS: Sorry.

12 THE COURT: -- try to answer Mr. Freedman's question

13 and then stop. And if there's another question, you can answer

14 that one, and if your answer isn't sufficient, Mr. Langhofer

11:43:23AM 15 will have an opportunity on redirect to ask you.

16 THE WITNESS: I'm very sorry, Your Honor. I got a

17 little bit carried away.

18 THE COURT: Yes. Are you aware that the -- are you

19 familiar with any of the parts of the election procedures

11:43:35AM 20 manual.

21 THE WITNESS: I have examined parts of the 2019 and

22 then the draft updated 2023 manual.

23 THE COURT: There apparently is a caution in there

24 about SAVE that suggests that there should be at least a

11:43:58AM 25 two-week wait between naturalization and checking SAVE.

11:44:06AM 1 THE WITNESS: Yes. So in the USCIS deposition, the --  
2 THE COURT: He said one to two days.  
3 THE WITNESS: They said one to two days. They said  
4 they thought users sometimes thought there was more of a delay.  
11:44:18AM 5 So I don't know. Maybe sometimes there's a longer delay. I am  
6 not sure.  
7 BY MR. FREEDMAN:  
8 Q. Professor Richman, I got sort of two follow-ups on this.  
9 One, had you actually reviewed the USCIS deposition before you  
11:44:32AM 10 prepared your report?  
11 A. That was one of the documents that was provided to me.  
12 Q. Okay. But when I asked you at your deposition, do you  
13 remember what you said when I asked you if you --  
14 A. Wait, wait. No, let me correct. That was a document -- I  
11:44:48AM 15 think that was not a document I got originally, and I got that  
16 later. So I'm sorry. I'm very sorry. I was getting confused.  
17 That was not part of the original set of documents I was  
18 provided with.  
19 Q. Since I deposed you, you've gone back and reviewed the  
11:45:04AM 20 USCIS testimony?  
21 A. I got access to that report after you deposed me, yes.  
22 MR. FREEDMAN: Let's pull up -- since I was going to  
23 ask about it anyway. Can we pull up PX6, the Elections  
24 Procedures Manual at PDF page 24, at the bottom, part C?  
25

11:45:19AM 1 BY MR. FREEDMAN:

2 Q. You reviewed the Elections Procedures Manual before you  
3 prepared your report, right?

4 A. Yes, I did.

11:45:31AM 5 Q. And the language here is exactly what Judge Bolton referred  
6 to: Often there's a delay between when a registrant becomes a  
7 U.S. citizen and when that registrant's citizenship status has  
8 been updated in SAVE. Therefore, certain precaution must be  
9 taken if a county recorder receives a voter registration form  
11:45:51AM 10 within two weeks of a registration deadline that contains a  
11 citizenship naturalization or alien registration number.

12 You are aware of that, right?

13 A. Absolutely.

14 MR. FREEDMAN: We can pull that down, Stephen.

11:46:08AM 15 BY MR. FREEDMAN:

16 Q. Let's turn to the Motor Vehicle Division database. You  
17 discussed on direct some of the limitations of the MVD  
18 database, right?

19 A. I suppose.

11:46:25AM 20 Q. Well, let's just walk through some of them so the record is  
21 nice and clear. One of the limitations is when MVD began  
22 asking for documentation of citizenship, right?

23 A. That's right.

24 Q. Licenses in the MVD database before 1997 don't indicate  
11:46:47AM 25 citizenship, right?

11:46:49AM 1 A. More or less.

2 Q. And you talked a little bit about this in your direct. You

3 agree that the MVD -- in the MVD database there's some

4 probability of data entry error that could lead to matching

11:47:06AM 5 failures, right?

6 A. Yes, there's that possibility.

7 Q. And another limitation is that the MVD database isn't

8 necessarily updated at the time an individual becomes a U.S.

9 citizen?

11:47:21AM 10 A. Correct.

11 Q. You certainly talked about that on your direct?

12 A. I did.

13 Q. Is another limitation that the ADOT Max legal presence

14 information isn't always up to date?

11:47:32AM 15 A. The ADOT match to --

16 Q. -- Max.

17 A. The ADOT match to Max? I'm sorry, could you repeat the

18 question?

19 Q. I will repeat. I stumbled on the word. I meant Max,

11:47:43AM 20 M-A-X. So the question is -- I'll ask it this way. The DMV

21 Max, M-A-X, legal presence information is not always up to

22 date?

23 A. Exactly, staleness issue, yes.

24 Q. And you also talked about this on your direct. Another

11:48:06AM 25 limitation is that not every interaction with ADOT requires

11:48:10AM 1 someone to provide proof of citizenship or authorized presence,  
2 right?

3 A. Yes, exactly.

4 Q. Just because I want to make sure that we are clear on this.  
11:48:18AM 5 If an MVD customer is not getting a real ID and is just  
6 updating their name, they are not required to provide proof of  
7 citizenship or authorized presence, right?

8 A. Wel, so if they are getting a duplicate issuance, so it  
9 would depend on, you know, updating a name could happen in the  
11:48:38AM 10 context of an action that would lead to it or not. But if the  
11 credential issuance is a duplicate issuance and it's not a real  
12 ID, then they wouldn't.

13 Q. And the same question with regard to updating an address.

14 A. Again, it's going to be a matter of whether -- what kind of  
11:48:56AM 15 action they're taking, but if it's merely a duplicate issuance,  
16 then for a non-real ID it would not require it.

17 Q. And if somebody -- same question, somebody -- their ID is  
18 lost or stolen and they want to replace it, same answer?

19 A. Again, if it's a duplicate issuance, then that's not going  
11:49:15AM 20 to be required for a non-real ID.

21 Q. Okay. I want to turn to some of your discussion. I  
22 believe this was just after the break about 10:55 about  
23 Professor McDonald's observations about county to county. And  
24 you talked about his analysis of canceled voters, right?

11:49:48AM 25 A. Yes.

11:49:51AM 1 MR. FREEDMAN: Stephen, can you pull up PX334, which  
2 is Professor McDonald's analysis on canceled voters? Okay.  
3 Can we do a side-by-side between that and exhibit -- Defense  
4 Exhibit 930, which is Professor Richman's Table 2.5 that we'll  
11:50:17AM 5 be spending some more time on? Stephen, can you highlight the  
6 total for the -- on professor -- Dr. Richman's -- I'm sorry,  
7 Dr. McDonald's report for canceled? It's 1290. Do you see  
8 that? And professor -- Dr. Richman's canceled lack of DPOC,  
9 the right most column is 858. You see that, Stephen, second  
11:50:46AM 10 line? If you could highlight?  
11 BY MR. FREEDMAN:  
12 Q. So there's about a 430-person difference, right?  
13 A. I don't think it's quite that large, but yeah -- yeah,  
14 that's about right, yep.  
11:51:09AM 15 Q. 432?  
16 A. Yeah, sorry. Doing math on the stand is -- yeah, I agree.  
17 Q. I promise I won't make you do the things I make my kids do.  
18 Math on their feet.  
19 So the question I have about this, on direct you said  
11:51:25AM 20 that you were concerned about the under-inclusiveness of  
21 Dr. McDonald's citizenship because he was only looking at one  
22 cancelation code for -- based on citizenship; do you recall  
23 that testimony?  
24 A. This was in relation to the -- his argument about uneven  
11:51:48AM 25 implementation across counties.

11:51:50AM 1 Q. That's right, but you had a question about whether he was  
2 including enough cancelation codes in this chart, his table 1,  
3 right?

4 A. That's a potential source of cross-county variation.

11:52:06AM 5 Q. But when you calculated the canceled voter on your chart,  
6 canceled lack of DPOC, you came up with a smaller number than  
7 he did? Did you not include the codes that you said that he  
8 should have included?

9 A. Could you restate where in my report did I make this  
11:52:25AM 10 calculation you are referring to? I would like to be able to  
11 look at that.

12 Q. I am just referring to your Table 2.5, canceled lack of  
13 DPOC. You have got an 858 number.

14 A. Oh. Well, so the difference is because the 858 is, as we  
11:52:45AM 15 discussed, not inclusive of the people with any match with the  
16 ADOT file, whether that's indicating they're a citizen or a  
17 non-citizen.

18 The 858 are the individuals who are on the canceled  
19 file that McDonald examined who did not have a match of any  
11:53:08AM 20 type with the -- with the files or they had a match which would  
21 not allow one to identify their citizenship status.

22 THE COURT: I'm sorry. I still don't understand the  
23 difference, why Dr. McDonald has 430 more canceled than you do.

24 THE WITNESS: So mine -- the total on the right is not  
11:53:34AM 25 a total for the total number of individuals on the canceled



11:53:38AM 1 file. I was able to replicate Dr. McDonald's number of 1290,  
2 and I have no issues with that in terms of the total number of  
3 people with that status code in the database. The number on  
4 Table 2.5 is a different number because it's looking at a  
11:53:55AM 5 subset of the 1290.

6 THE COURT: Okay. I understand it's a subset, but I  
7 don't understand what --

8 THE WITNESS: What kind of subset?

9 THE COURT: What kind of subset? Who are the other  
11:54:10AM 10 432 canceled voters that are not included in your analysis of  
11 the ADOT numbers?

12 THE WITNESS: Well, so I believe the others are people  
13 for whom we have some kind of ADOT information. So if we turn  
14 to the -- with your permission, I would like to consult my  
11:54:38AM 15 report to clarify --

16 THE COURT: Go right ahead.

17 THE WITNESS: -- the numbers. thank you.

18 So there are a variety of other groups that could be  
19 in the 858, including people for whom ADOT has some kind of  
11:55:24AM 20 information. The 858 is a set of individuals for whom my  
21 analysis of the match between the ADOT data and the voter file  
22 did not provide a match.

23 So these are people -- some of them have a driver's  
24 license number that's clearly not matchable like CO, maybe for  
11:55:53AM 25 Colorado, I don't know, as their driver's license number.

11:55:57AM 1 Couldn't match that between the databases. So these are people  
2 for whom we don't have information from ADOT about their  
3 citizenship status.

4 BY MR. FREEDMAN:

11:56:11AM 5 Q. Professor Richman, where's this discussed in your report?

6 A. This is discussed in the discussion of Table 12, and it's  
7 also discussed in the paragraphs related to my critique of  
8 McDonald's analysis starting I think around paragraph 66.

9 MR. FREEDMAN: Stephen, could you pull down 334 but  
11:56:38AM 10 replace it with 336? I would like a side by side with Table  
11 2.5.

12 BY MR. FREEDMAN:

13 Q. So I have a similar question for you, Dr. Richman, about --  
14 this is Professor McDonald's federal-only table, and he  
11:56:57AM 15 calculates -- he's not calculating, he's just adding up, there  
16 are 19,439 federal-only voters, and on your chart you have  
17 19,262. That's a difference of about 170?

18 A. Yes. Thank you. Again, this is the same issue as I've  
19 discussed previously. The far right column in Table 2.5 is a  
11:57:28AM 20 column only as it's labeled -- these are only individuals  
21 without a match with the ADOT file that would allow one to  
22 identify citizenship status. And so it's a subset.

23 I have no disagreement with Professor McDonald's  
24 number. For example, the 31 and the 65 individuals on the two  
11:57:49AM 25 left columns are not included in the 19,262 number because

11:57:53AM 1 those are individuals -- they're part of the 19,439 number, but  
2 these are people for whom there was an ADOT match that allows  
3 us to, you know, get some indication of citizenship status.

4 There's also, as I discussed in my analysis of  
11:58:09AM 5 McDonald's report, individuals for whom and we -- people for  
6 whom there's evidence that they are U.S. citizen and they are  
7 on the federal-only list, and so that's another group that's  
8 not part of the 19,262 because that's only -- 19,262 are only  
9 the people for whom ADOT records aren't providing evidence one  
11:58:31AM 10 way or another about their citizenship status.

11 Q. So I'm sorry, the part I didn't follow there is why you  
12 think there are federal-only voters where ADOT has information  
13 that they're U.S. citizens?

14 A. McDonald discussed that in his report. He claimed one  
11:58:49AM 15 number which was in error because it excluded consideration,  
16 one of the issues we just talked about, people who have a  
17 license issued before 1997 roughly, are not going to have proof  
18 of legal -- of authorized presence provided to ADOT.

19 So I ended up with a slightly different number once  
11:59:11AM 20 correcting for some of the issues in his analysis, but we both  
21 agreed that there are a number of people -- I talked about this  
22 number before, there are 112 people that I was able to identify  
23 for whom I believe ADOT has evidence that they're a citizen and  
24 they're on the federal-only list.

11:59:33AM 25 Q. And where is the that 112 number in your report?

11:59:35AM 1 A. It's listed on paragraph 96 and paragraph 100.

2 THE COURT: Mr. Freedman, we are going to break for  
3 lunch. We will reconvene at 1:00. Court is in recess.

4 (Proceedings conclude at 11:59 a.m.)  
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C E R T I F I C A T E

I, ELVA CRUZ-LAUER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 16th day of November, 2023.

s/Elva Cruz-Lauer  
Elva Cruz-Lauer, RMR, CRR